

Central Law Journal.

ESTABLISHED JANUARY, 1874.

VOL. 36

ST. LOUIS, MO., FEBRUARY 24, 1893.

No. 8

THE NEW EDITION OF Sutherland ON Damages.

REVISED, SECTIONIZED AND ENLARGED

BY

The Author, HON. J. G. SUTHERLAND and JOHN R. BERRYMAN.

The profession already knows the high value of **Sutherland on Damages**, which, on a subject on which there are other text books of merit, stands second to none in fullness, clearness, accuracy, date of cases cited, or, finally and not least important, facility of reference.

THE NEW EDITION

Is in all respects a new edition, and will render even more secure the position attained by the work in its first edition as the best on the subject. The fruits of nearly 7,000 new cases are embodied in it, and the text has been freely rewritten to accommodate this new matter, which occupies not less than 550 pages. The old plates have been entirely discarded and the book re-set. Side paging enables those familiar with the first edition or having references to it to use this. The development of the law during the past ten years has been fully and practically considered and the result, a work containing one-third more than any other on Damages, is a storehouse of information upon the law of that subject. The book is admirably Sectionized and leading lines are printed in bold-face type, and the Table of Contents and Index are enlarged and made to accord with this better system.

Vols. 1 and 2 Now Ready. Vol. 3 Ready Shortly.

THREE VOLUMES, OCTAVO, \$18.00; \$18.75 PREPAID.

CALLAGHAN & COMPANY,
CHICAGO, ILL.

CENTRAL LAW JOURNAL.

Central Law Journal.

A LEGAL WEEKLY NEWSPAPER.

Published by

Central Law Journal Company,

919 OLIVE ST., ST. LOUIS, MO.

To whom all communication should be addressed.

Subscription price, FIVE DOLLARS per annum, in advance. Single numbers, TWENTY-FIVE CENTS.

Copyright 1893, by CENTRAL LAW JOURNAL COMPANY.

Entered at the post-office, St. Louis, Mo., as second-class matter.

CONTENTS.

EDITORIALS.

Constitutionality of State Restrictions upon Foreign Corporations,	149
Chinese Exclusion Act Unconstitutional,	149
The United States Circuit Court of Appeals,	149

NOTES OF RECENT DECISIONS.

Stock Subscriptions—Action to Set Aside—Joinder of Plaintiffs,	150
Officers—Resignation—Withdrawal,	152
Conversion by Carrier of Goods—What Constitutes—Claim of Third Person,	153

LEADING ARTICLE.

Right of Women to Vote for School Officers. By D. H. Pingrey,	154
---	-----

LEADING CASE.

Foreign Corporations—Constitutional Law—Failure to Comply with State Regulation—Interstate Commerce. Gunn v. White Sewing Machine Co., Supreme Court of Arkansas, December 3, 1892 (with note),	156
---	-----

BOOK REVIEWS.

American Railroad and Corporation Cases, Vols. 4 and 5,	160
American and English Encyclopedia of Law, Vol. 20,	160
American State Reports, Vol. 27,	160
The Law of Public Health and Safety,	150
BOOKS RECEIVED,	160
WEEKLY DIGEST OF CURRENT OPINIONS,	161
DIGESTS OF MISSOURI COURTS OF APPEAL,	168

THE LAW OF PRIVATE CORPORATIONS

By HENRY O. TAYLOR, Esq.,
OF THE NEW YORK BAR.

Second Edition, thoroughly Revised and Enlarged.
1 Vol. Svo. \$6.00.

[From the Albany Law Journal.]

Remarkably compact and logically constructed.

[From the American Law Review.]

The product of a clear discriminating mind, equal to the importance of the subject handled by it.

KAY & BRO., Publishers, - Philadelphia, Pa.

EVERETT W. PATTISON,

ATTORNEY AND COUNSELOR,

ODD FELLOWS' BUILDING, ST. LOUIS, MO

Special attention given to preparing briefs and arguing cases in Missouri Supreme Court, St. Louis Court of Appeals and United States Court of Appeals.

CORNELL UNIVERSITY SCHOOL OF LAW.

Two years' course leading to the degree of Bachelor of Laws. Graduate course of one year leading to the Master's Degree. Full resident Faculty and large corps of non-resident Lecturers. All University courses open without extra tuition to properly qualified law students. Next session opens September 26, 1892. For announcement containing full particulars, address

THE SCHOOL OF LAW,
Ithaca, N. Y.

BARGAINS IN NATIONAL REPORTERS, ETC.

All bound in full sheep, fine second-hand condition, many of the books entirely new. For sale by WILLIAMSON LAW BOOK CO., Rochester, N. Y. The first order gets them.

Atlantic Reporter, 24 Vols. & Digest.....	\$50 00
Atlantic Reporter, 1st 19 Vols. & Digest.....	30 00
Atlantic Reporter, 1st 14 Vols.....	17 50
Atlantic Reporter, Vols. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, any Vol.....	1 25
Federal Reporter, 51 Vols. & 3 Digests.....	155 60
Northeastern Reporter, 31 Vols. & Digest.....	65 00
Northeastern Reporter, 1st 23 Vols.....	35 00
Northeastern Reporter, 1st 20 Vols.....	27 00
Northeastern Reporter, 1st 17 Vols.....	20 00
Northeastern Reporter, 1st 9 Vols.....	9 00
Northeastern Reporter, Vols. 3, 4, 5, per Vol.....	1 00
N. Y. Supplement, 18 Vols.....	54 00
Northwestern Reporter, 49 Vols. & 2 Digests.....	100 00
Northwestern Reporter, Vols. 24 to 45, 20 Vols.....	35 00
Northwestern Reporter, Vols. 24 to 39, any Vol.....	1 75
Pacific Reporter, 29 Vols.....	65 00
Pacific Reporter, 1st 19 Vols.....	34 00
Pacific Reporter, Vols. 9 to 19, any Vol.....	1 50
Southwestern Reporter, 17 Vols.....	35 00
Southwestern Reporter, 1st 9 Vols.....	15 50
Southwestern Reporter, Vols. 1, 2, 4, 5, 6, 7, any Vol.....	1 50
Southern Reporter, 9 Vols.....	26 00
Southern Reporter, 1st 6 Vols.....	10 00
Southern Reporter, Vols. 1, 2, 3, 4, any Vol.....	1 50
U. S. Supreme Ct. Reporter, 11 Vols.....	25 00
U. S. Supreme Ct. Reporter, Vols. 1, 2, 3, 4, 7, 8, per Vol.....	1 50
American Digest, 1887, 1888, 1889, 1890, 1891, 5 Vols.....	22 50
Or any Vol. of the above for.....	5 00
Eastern Reporter, 11 Vols.....	5 50
Western Reporter, 14 Vols.....	7 00
Central Reporter, 12 Vols.....	6 00
New England Reporter, 6 Vols.....	3 00
Lawyers' Reports, Annotated, 15 Vols.....	37 50
General Digest, 6 Vols. L. C. P. Ed.....	20 00
West Coast Reporters, 8 Vols.....	16 00
Pacific Coast Law Journal, 12 Vols., less Vol. 3, 11 Vols.....	20 00
N. Y. State Reporter, 47 Vols. & 2 Digests.....	120 00
Criminal Law Magazine & Reporter, 12 Vols.....	40 00
Central Law Journal, 34 Vols. & 1 Digest, 35 Vols.....	50 00

Send for our catalogue. Address:

WILLIAMSON LAW BOOK COMPANY,
Rochester, N. Y.

How The Reporters Grew

And what their growth has been to the American bar, is told in an illustrated pamphlet just issued by the West Publishing Co., St. Paul, Minn. The eight-story building where they are published is shown, and there are cuts and descriptions of the editorial department, the new type-setting machines, the underground vaults, the extensive bindery, press-room, and other departments. "The West Publishing Co. has grown in a few years from the smallest beginnings to be one of the largest publishing houses of any kind in this country, and the most extensive law-book concern in the world." This is because the entire bar of the country has found the Reporter-idea a good one. How it began, what it has become, and whether it will continue, are questions answered in this little pamphlet, which is

Sent Free on Request.

WEST PUBLISHING CO., St. Paul, Minn.

Central Law Journal.

ST. LOUIS, MO., FEBRUARY 24, 1893.

The case of *Gunn v. The White Sewing Machine Company*, recently decided by the Supreme Court of Arkansas, and which will be found in full on page 156 of this issue, brings up a new and interesting phase of the question as to the legislative power of States in the regulation of foreign corporations, so far as such regulations conflict with interstate commerce. The Arkansas act in question, which is similar to that of many of the States, has for its object the prohibition of doing business within the State by a foreign corporation unless it complies with certain provisions, such as procuring a certificate from the secretary of State and providing for a home domicile, etc. In the case in question the foreign corporation sought a remedy within the State to enforce payment for certain goods sold there from without and it was contended successfully that the statute was unconstitutional, in so far as it affected such sales. Notwithstanding the able dissenting opinion of the chief justice, the decision seems to be in strict accord with constitutional principles and is in harmony with the only precedent obtainable upon the subject. In *Cooper Manufacturing Company v. Ferguson*, 113 U. S. 727, Justices Matthews and Blatchford, in the construction of a statute of Colorado of a similar character to the one here at issue, wherein the transaction was the making of a contract in Colorado to manufacture certain machinery in Ohio to be delivered to the purchasers in Colorado, held that this was commerce and to prohibit it, except upon condition, was to regulate commerce between Colorado and Ohio which is within the exclusive province of congress. A distinction was taken between the prohibition of the sale of goods within a State by a foreign corporation and that of acquiring a domicile and doing business within the State. While it was competent for a State to prohibit a foreign corporation from acquiring a domicile from carrying on within that State its business of manufacturing machinery, without complying with certain conditions, it could not prohibit it from selling in Colorado by contracts made there, its

VOL. 36—No. 8.

machinery manufactured elsewhere, for that would be to regulate commerce among the States. In the Arkansas case, therefore, it was very properly held that the prohibition of the statute was ineffective and invalid as to the sale for which payment was sought to be enforced in that case.

The very recent case of *Bateman v. Western Star Milling Co.*, decided by the Court of Civil Appeals of Texas, which is just reported, sustains the conclusion of the Arkansas court.

The recent decision of United States District Judge Nelson of Minnesota, in reference to the Chinese Exclusion Law, is of great importance, inasmuch as its effect, if affirmed on appeal to the supreme court where it has now gone, will be to practically defeat the intention of the framers of that act. The main point upon which the decision seems to be based was that the law is unconstitutional inasmuch as it provides for a summary personal process without a jury trial. Counsel for a Chinaman who had been a resident of the United States for seven years and had been arrested under the law, contended on *habeas corpus* proceedings, that the provision in the law for an imprisonment of thirty days and the return to his native country of a Chinaman after no proceeding, other than a hearing before a United States Commissioner, was unconstitutional and violated the fundamental right of every person in the United States to a trial by jury when accused of any crime, there being also no provision in the act for an appeal, and even when a writ of *habeas corpus* is desired "no bail shall be allowed." The court took this view of the law as contended for by the petitioner's counsel and released the Chinaman. Judged by a fair standard it must be said that the provisions of the act militating as it does against the rights of persons and property and allowing neither a jury trial on questions of fact nor an appeal, seem to be in violation of the spirit of the constitution.

The January number of the *London Law Quarterly Review* contains a well written article by Henry Budd on the subject of the "United States Circuit Court of Appeals." It will be difficult to find a clearer statement of the scope and effect of the new act establish-

ing that court and of the jurisdiction of our federal courts in general than that article gives us. The writer after a review of the features of jurisdiction, propounds the question how far the act will accomplish its primary objects viz., a speedy determination of causes and the relief of the Supreme Court. The first object, he thinks it is manifest, will be accomplished; as there are nine hearings (or courts) where formerly there was but one, undue delay will become almost impossible. As to the second object, the relief of the Supreme Court, it is perhaps a little too soon to measure the exact extent of the relief that will be given. Upon a calculation of the probabilities, using as a basis certain information now at hand as to the dockets of the different courts, he concludes that a great relief has already been wrought. It must, however, be borne in mind that the act opens the supreme court to some cases which formerly could not have entered therein, and also that the pecuniary limitation upon appeal has been reduced from five thousand to one thousand dollars. But so far as can be judged in the light of present knowledge the act will work great relief, and the general disposition of the bar "is to regard it as a beneficial act which, while not perfect, contains admirable features and should be given a fair trial."

NOTES OF RECENT DECISIONS.

STOCK SUBSCRIPTIONS—ACTION TO SET ASIDE—JOINDER OF PLAINTIFFS.—In *Bosher v. Richmond & H. L. Co.*, the Supreme Court of Appeals of Virginia decide that persons who have been induced by the same fraudulent representation contained in a prospectus to subscribe to the stock of a corporation have a common interest and may join in a bill for the benefit of themselves and others similarly deceived to set aside their subscription. Lacy, J., says:

The jurisdiction of a court of equity to rescind contracts fraudulently procured is undisputed. The appellants insist that one object to be attained by proceedings in chancery is to prevent a multiplicity of suits, and hence several persons who have a common interest, arising out of the same transaction, although their interest, strictly speaking, is not joint, may unite in one suit, and may even be compelled to do so by the defendant (citing *Bart. Ch. Pr. p. 253*); that it is a favorite object of equity to prevent a multiplicity of suits (*Sand, Eq. 13*); and that there is an exception allowed, founded on the mere fact of numerosness, when it may amount to a great inconvenience or posi-

tive obstruction of justice (*Story, Eq. Pl. §§ 96-98*),—and insist that in this case the petitioners, and those in whose behalf they sue, are about 200 in number; are a class well defined and distinct from the promoters, necessarily antagonistic in interest to them and to the company, which they organize and control. Upon a prospectus, and upon circulars, cards, statements, etc., supplementary thereto, in which the grossest material misrepresentations were made, all the petitioners' class were induced to make contracts, all exactly alike; all based upon said prospectus, circulars, cards, etc.; are made with the same party, the defendant company; and are fraudulent and void. That the company, by its agents, fraudulently, by the issue of a false prospectus and the circulation of false circulars, cards, statements, etc., induced petitioners and all stockholders of their class to subscribe for its stock and pay in their money. And the prayer is that these contracts be rescinded and the money refunded to the defrauded stockholders. That the prospectus is referred to, and made a part of each certificate of stock.

On the other hand, the appellees say that the demurrer was properly sustained to the bill by the circuit court on the ground that each one of the four plaintiffs had a separate and distinct claim against the defendants, and hence could not unite in one bill, and, such being the case, they could not, *a fortiori*, maintain a creditors' bill, and that the suit could not be properly defended by the defendants without filing a separate answer in each case, which would require probably 200 answers, and that the doctrine of the equitable jurisdiction of courts of equity to prevent a multiplicity of suits has no application to such a case as this, and that in this case the court is obliged to go back to the execution by each individual of his distinct and separate contract with the company, investigate the circumstances under which it was made, and determine upon its validity. Citing *Campbell, C. J.*, as holding that in *Winslow v. Jenness*, 64 Mich. 84, 30 N. W. Rep. 905: "The general rule in equity is that several grievances must be redressed by several proceedings, the only recognized exceptions being when a single right is asserted on one side, which affects all the parties on the other side in the same way, or a single wrong is complained of, which falls on them all simultaneously and together. Familiar instances are rights in common which are resisted by the owner of the estate on which it is charged, tax rolls assessing all parties in an equal ratio, and fraud by trustees affecting all the beneficiaries. If there is any distinction in the proportion or character of several grievances, there can be no joinder." And citing *Gray v. Rothschild*, 112 N. Y. 668, 19 N. E. Rep. 847, as holding that parties claiming to have been defrauded by similar, but not the same, representations, could not unite, as each had a separate cause of action, and that the statement by Mr. Cook in section 156 of his book on stockholders, that several stockholders defrauded in the same way may join in the bill as co-complainants, is only a conjecture by him, and incorrect, in the light of recent decisions, and that it was held by Lord Eldon in *Jones v. Garcia del Rio*, 1 Turn. & R. 297, in a case identical with this case, that the plaintiffs could not join, nor sue on behalf of themselves and others; "that the plaintiffs, if they had any demand at all, had each a demand at law, and each a several demand in equity; that they could not file a bill on behalf of themselves and the other holders of scrip; and, as they were unable to do that, they could not, having three distinct demands, file one bill,—and upon that ground alone . . . dissolved the in-

junction." And citing and relying on the rulings of this court in the recent case of *Railroad Co. v. Smoot*, 81 Va. 495: "That two or more parties, having distinct causes of action against the same defendant, cannot join in one suit to enforce their rights. To enable plaintiffs to join in one suit, they must have a community of interest, such as to establish a street or to have obstructions in an existing street removed, or as taxpayers to restrain municipal corporations and their officers from transcending their powers in a way injurious to taxpayers."

In considering the single question in dispute as to this appeal, stated above, we will observe that it is a general rule of law that if a person is induced to enter into a contract by false representations, fraudulently made by the other contracting party or his agent, the contract is voidable at the option of the innocent party. This rule applies with full force both to contracts of membership and to contracts of purchase or to take shares in a corporation at a future time. It may be stated as a general rule that, if a subscription for shares was obtained by fraudulent representations, it may be annulled by the subscriber at any time before other equities have intervened. Lord Romilly said, (*Railway Co. v. Kirsch*, L. R. 2 H. L. 99), in considering the right of a person to be relieved of shares which he had taken upon the faith of a fraudulent prospectus issued by the company: "Contracts of this description, between an individual and a company, so far as misrepresentation or suppression of the truth is concerned, are to be treated like contracts between any two individuals. If one man makes a false statement, which misleads another, the way in which that is to be treated affords the example for the way in which a contract is to be treated when a company makes a false statement which misleads an individual." 1 Mor. Priv. Corp. § 95. A promoter is a person who brings about the corporation and organization of corporations. He brings together the persons who become interested in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which leads to the formation itself. Every person, acting by whatever name in the forming and establishing of a company at any period prior to the company, is considered in law as occupying a fiduciary relation towards the corporation. He is an agent of the corporation, and is subject to the disabilities of such. He is guilty of a breach of trust if he sells property to the corporation, purchased after he began promoting, without informing the company that the property belongs to him, or he may commit a breach of trust by accepting a bonus or commission from a person who sells property to the corporation. The law is rigid in its protection of the corporation and stockholders. *Cook, Stocks*, § 657. When a stockholder has been defrauded by such trustees, and seeks redress against the fraud, it is no answer to say that by proper inquiry he might have learned the truth, or by more vigilance he might have discovered the deception; and, when the representations are by a prospectus, he is not obliged to investigate for himself, and investigate the truth of representations, to protect himself against the charge of negligence. But the principle of law, that fraud vitiates all contracts, applies to a contract of subscription, and such contract is voidable for fraud, at the option or election of the person defrauded. There are several remedies which are open to a subscriber induced to subscribe by fraud. One is, as pursued in this case, by bill in equity to restrain suits at law upon his undertakings, and to set aside the subscription contract, and also, if he wishes, to recover back payments already made on the sub-

scriptions. And it is said by Mr. Cook in his valuable book on *Stocks and Stockholders and Corporation Law*, that this is the most fair, safe, and complete remedy that the subscriber has. It is a decisive notice to the corporation and all third parties not to rely on the subscription in question. It enables the subscriber to set aside the contract, to enjoin action at law for calls, and to recover back payments made before the discovery of the fraud. It is the customary, and, it seems, favorite, remedy in England, and has been clearly upheld in this country. The complainant in such a bill in equity, to set aside a subscription obtained by fraud, cannot sue in behalf of himself and such others as may choose to come in; but several subscribers defrauded in the same way may join in a bill as co-complainants. The corporation is to be a defendant; and, if merely a cancellation of a subscription and an injunction against suits at law are sought, the complainant, it seems, may be the sole defendant. A court of equity in these actions will give complete relief by decreeing that the directors guilty of the fraud shall refund to the subscriber payments made by him before discovery of the fraud. This relief dispenses with an action at law for damages for deceit, and when sought for in the bill in equity the guilty directors must be made parties, and the bill is not multifarious by reason of its blending prayers for these various kinds of relief. *Cook, Stocks*, §§ 150-156; citing *Reese River, etc., Co. v. Smith*, L. R. 4 H. L. 64; *Hallows v. Fernie*, L. R. 3 Ch. App. 467; *Vreeland v. Stone Co.*, 29 N. J. Eq. 188.

In the case of *Brinkerhoff v. Brown*, 6 Johns. Ch. 151, Chancellor Kent said, upon this question of the misjoinder of plaintiffs: "There is no sound reason for requiring the judgment creditors to separate in their suits when they have one common object in view, which in fact governs the whole case. There is no particular matter in litigation peculiar to each plaintiff; and, if they be required to sue separately, it may be pertinently asked, *cut bono?* Their rights are already established, and the subject in dispute may be said to be joint, as between the plaintiffs on the one hand and the defendants on the other, charged with a combination to delay, hinder, and defraud their creditors. If each judgment creditor was to be obliged to file his separate bill, it would be bringing the same question of fraud into repeated discussion, which would exhaust the fund, and be productive of all the mischief and oppression attending a multiplicity of suits. It appears to me, therefore, that the judgment creditors, in cases of fraud in the original debtor, have a right to unite in one bill to detect and suppress that fraud, [citing the chief baron in *Ward v. Duke of Northumberland*, 2 Anstr. 469, as agreeing that unconnected parties might be joined in one suit, where there was a common interest among them all, centering in the point in issue in the cause]. And, if I am not mistaken, it is the case in the present suit as respects the plaintiffs. The *gravamen* of the bill is fraud, equally injurious to all the plaintiffs, and their interests all center on that point." See the opinion and the cases cited. Saying further, "There was a series of acts on the part of the persons concerned in this Genesee Company, all produced by the same fraudulent intent, and terminating in the deception and injury of the plaintiffs. The defendants performed different parts in the same drama, but it was still one piece,—one entire performance,—marked by different scenes;" and "that the subject-matter of the bill and of the relief, and the only matter in litigation is, the fraud charged," etc. The learned chancellor further observes that the rules of pleading in chancery

are not so precise and strict as at law, and are more flexible in their modification, and can more readily be made to suit the equity of the case and policy of the court, and that the case, also, of creditors suing on behalf of themselves and all others, is another instance of the relaxation of the severity of a general rule of pleading. Mr. Justice Story, in his work on Equity Pleading, (section 279), speaking of the objection to a bill for multifariousness upon the misjoinder of plaintiffs, that the principle applies to an improper joinder of plaintiffs who claim no common interest, but assert distinct and several claims against one and the same defendants. If several distinct holders of scrip or shares in a loan should sue on behalf of themselves and all others to have their subscriptions refunded, the bill would be multifarious; for their interests and demands are distinct and several. But the objection of misjoinder does not apply where all the parties plaintiff have an interest in the suit, although it is not a coextensive interest. Another exception to the general doctrine respecting multifariousness and misjoinder, which has already been alluded to, is when the parties (either the plaintiffs or defendants) have one common interest touching the matter of the bill, although they claim under distinct titles and have independent interests. Mr. Pomeroy, in his work on Equity Jurisprudence, has examined this subject with great ability, and maintains the jurisdiction on behalf of persons having a common interest in the subject of the suit, and in cases where there is a community of interest in the question at issue, and perhaps in the kind of relief sought, only. Pom. Eq. Jur. § 269. If the claims are distinct, and grow out of different transactions, it has been denied that the plaintiffs may unite—join as plaintiffs—against a common defendant because their claims are similar, as we have seen, as in *Jones v. Garcia del Rio*, *supra*, where each had a demand at law, and each a several demand in equity. Where the fraudulent acts complained of are different and unconnected, the joinder is not allowed because they are distinct and separate, although similar, as where agents procure subscriptions by fraudulent representations at different times and under varying circumstances, although similar in their general scope, because the defense is different and the acts are different and distinct, and the proofs are necessarily different, each dependent upon its own circumstances. But in a case like the one made by this bill, where the parties allege in the bill that the fraudulent acts are exactly the same, and perpetuated by the same means, and the injury identical as to all, except only in the amount of the injury, as where the same false statements are distributed to all, and the same false and deceitful prospectus is operated upon all alike, and all have been defrauded by the same means, and the relief sought is the same, and the subject-matter identically the same, there is, a community of interest and right, and such persons may unite as coplaintiffs against the common wrong-doer. If this were not so, it is difficult to see how relief could be had at all. In so many holdings many are necessarily small, and the whole interest destroyed inevitably in an effort to redress an admitted wrong.

OFFICERS—RESIGNATION—WITHDRAWAL.—

In *State v. Augustine*, the Supreme Court of Missouri holds that where a county treasurer presents his resignation to the county court under the mistaken idea that said court is the

proper authority and the resignation is accepted and with the consent of the party certified to the governor who acts thereon by designating a successor, it is then too late for him to withdraw the resignation. Macfarlane, J., says:

This appeal seems to have been taken in the first instance to the Kansas City court of appeals, and from there transferred to this court, for the reason that the proceeding involved the title to an office under the State, which gave exclusive jurisdiction to the supreme court. We find, with the papers on file, an opinion written by Judge Gill of said court of appeals, which we think clearly expresses the law in the case, and which we adopt as the opinion of this court. It is as follows:

"It is well-established law that, in the absence of express statutory enactment, the authority to accept the resignation of a public officer rests with the power to appoint a successor to fill the vacancy. The right to accept a resignation is said to be incidental to the power of appointment. 1 Dill. Mun. Corp. (3d Ed.) § 224; Mechem, Pub. Off. § 413; Van Orsdall v. Hazard, 3 Hill, 243; State v. Boecker, 56 Mo. 17. By section 11, art. 5, Const. Mo., it is provided that, 'when any office shall become vacant, the governor, unless otherwise provided by law, shall appoint a person to fill such vacancy,' etc. It seems that no provision exists in our statutes for filling the vacancy of county treasurer. Hence it follows that the power of appointment remains, as directed by the constitution, with the governor; and the authority to fill the vacancy being with the governor, here likewise rests the power to accept the resignation. In order, then, to create a vacancy in the office held by Augustine, his resignation must have been lodged with the governor, and by the governor accepted. There being no particular mode pointed out by statute or by the constitution, this resignation may be in writing or by parol. No particular form is required. It is only necessary that the incumbent evince a purpose to relinquish the office; that this purpose be communicated to the proper authority; and that this resignation be accepted either in terms, or something tantamount thereto, such as appointing a successor, etc. *Edwards v. U. S.*, 103 U. S. 471-474; *People v. Board*, 26 Barb. 502; Mechem, Pub. Off. § 414 et seq. When this resignation shall have been communicated to the proper authority, and the same shall be accepted,—whether formally or by the appointment of a successor,—it is beyond recall: It cannot then be withdrawn. *Mimmack's Case*, 97 U. S. 426. In view, then of these principles, it would seem that defendant, Augustine, had accomplished a complete resignation of the office to which he was elected. It is clear that he and the members of the county court assumed the law to require his resignation to be presented to the county court. In this they were clearly mistaken, since, as already shown, the governor of the State, the appointing power, was the proper party to whom the resignation should have been tendered. However, defendant's resignation was, by his knowledge and consent, forwarded to the governor, and he acted thereon by designating a successor, and this, too, before defendant made any effort to withdraw such resignation. This conduct on the part of Augustine signified a complete renunciation of the office,—a resignation,—and there was by the governor such an acceptance as constituted a vacancy. The naming of a successor (though a formal commission

had not been made out) committed, the governor to, and at law constituted, an acceptance of Augustine's resignation. *Mimmack's Case*, *supra*; *Mechem*, Pub. Off. § 415. The case at bar is one quite different from *State v. Boecker*, 56 Mo. 17, so confidently relied upon by defendant's counsel. There Boecker, on August 9, 1872, tendered his resignation as county clerk to take effect December 31st following, by filing the same with the county court. On September 9th, Boecker told Van Buskirk that he intended to withdraw his resignation. On September 14th, Van Buskirk presented to the governor a certified copy of Boecker's resignation, with a copy of the order of county court, accepting same, and secured his (Van Buskirk's) appointment. This was done, however, against the consent, express wishes, and protest of Boecker, quite the reverse of the case here. It was there held, as we have decided, that a deposit of the resignation with the county court was a mere nullity; and that to constitute a resignation it should have been, with the knowledge and consent of Boecker, lodged with the governor, and by him accepted. The evidence in the case at bar satisfactorily establishes the fact that Augustine consented and agreed that his resignation should be forwarded to the governor, and this was done, and the governor acted thereon before defendant attempted to withdraw the same."

CONVERSION BY CARRIER OF GOODS—WHAT CONSTITUTES—CLAIM OF THIRD PERSON.—The Supreme Court of South Carolina in *Kohn v. Richmond & B. R. Co.*, 16 S. E. Rep. 376, that where goods have been delivered to a carrier for transportation a demand thereof under a mortgage with condition broken, given by the consignor is not such legal process as will render the carrier liable for conversion on the refusal to deliver the goods to the mortgagee. *Pope, J.*, dissented. *McIver, C. J.*, says:

The plaintiffs having obtained judgment for the value of the goods, defendant appeals upon the several grounds set out in the record, which need not be specifically stated, as the case turns upon the single question whether a common carrier who has received goods for transportation from one person, and given him a bill of lading therefor, is bound to surrender them upon demand to a third person, who claims to be the true owner thereof, under pain of being liable to an action for the conversion of said goods at the suit of such third person. It is conceded that under the stringent rule of the common law a common carrier is liable as an insurer for goods committed to his charge for transportation, and nothing but the act of God or the public enemies will excuse him for failure to deliver the goods at their destination to the person to whom he has contracted to deliver them,—the consignee. Under this rule it is very obvious that the carrier would be liable to his bailor even if the goods were taken from his possession by process of law, and much more so if he voluntarily delivered them to the true owner, for this would not be either the act of God or of the public enemy. But it is claimed, and, we think, justly, that this stringent rule has been modified so as to excuse the carrier from liability where the goods have been taken from his possession by process of law, provided the carrier gives prompt

notice of such seizure to his bailor; for, as it is well put by *Campbell, C. J.*, in *Pingree v. Railroad Co.*, 66 Mich. 143, 33 N. W. Rep. 298: "If he is excusable for yielding to a public enemy, he cannot be at fault for yielding to actual authority what he may yield to usurped authority." See, also, *Stiles v. Davis*, 1 Black, 101. And the same doctrine is, at least impliedly, recognized, though the point was not distinctly raised, in our own case of *Faust v. Railroad Co.*, 8 S. C. 118. It is also contended that the rule is still further modified so as to excuse the carrier from liability to his bailor for the non-delivery of goods intrusted to him for transportation if he can show that he has delivered the goods to a third person, who was the true owner, and entitled to the possession thereof; and the case mainly relied upon to establish this proposition is *The Idaho*, 93 U. S. 575, though there are cases which have been decided in several of our sister States recognizing the same doctrine. In our own State, however, we have no case, so far as we are informed, which recognizes this modification of the rule as to a carrier's liability. It is true that the case of *Robertson v. Woodward*, 3 Rich. Law, 251, does seem to recognize the doctrine that an ordinary bailee—not a common carrier—may dispute the title of his bailor in an action of trover brought by the latter by showing that his bailor had sold the subject of the bailment before the bailment arose, and that defendant was authorized to defend the action for the benefit of the purchaser. But it seems to us somewhat difficult to reconcile that case with the previous case of *Manning v. Norwood*, 2 Mill. Const. 374. Be that as it may, however, and assuming, for the purposes of this case, that the stringent rule of the common law as to a carrier's liability has been thus further modified, as contended for by respondents, the question still remains whether the rule thus modified applies to this case. It will be observed that the cases which establish or recognize this modification of the rule only go to the extent of holding that a common carrier may deliver the goods intrusted to him for transportation to the rightful owner upon his demand, and, if he does, he may defend himself against an action brought by his bailor to recover damages for the non-delivery according to the contract of bailment by showing that he has delivered the goods to the rightful owner; but none of them go to the extent of holding that he is bound to deliver them to one who demands them as rightful owner, unless it be the case of *Wells v. Express Co.*, 55 Wis. 23, 11 N. W. Rep. 537, and 12 N. W. Rep. 441. In that case a package of money was intrusted to the carrier, to be delivered to *Wells & Cartwright*. When the package addressed to *Wells & Cartwright* reached its destination, the money was demanded by *Wells* alone he claiming to be the sole owner, and that *Cartwright* had no interest in it, to which *Cartwright*, being present assented verbally, though "there was no assignment by *Cartwright* of his apparent interest in the package to *Wells*, and no written order by *Cartwright* to deliver to *Wells*, and no offer of any receipt or acquittance from both." The defendant refused to deliver the money to *Wells* alone, and insisted also that the money had been subjected to garnishee proceedings against *Cartwright*. *Wells* then brought his action, not upon the bill of lading or express receipt, but for money had and received, and the court held that "irrespective of the garnishment," the plaintiff, having established his individual right to the money, was entitled to recover. The authorities cited by the learned judge, while they do establish the doctrine that a common carrier may, with safety, deliver to the rightful owner, do not establish the doctrine that

he is bound to do so; and his assumption that the one follows from the other is not, in our judgment, well founded. In addition to this, the action in that case was for money had and received, which does not necessarily imply a tort on the part of the defendant; while here the action is for the conversion of the goods, which does involve the idea of tort. Again, in that case it appeared that Cartwright, one of the persons named as consignee, was not only present when Wells, the other consignee, demanded the money, claiming it as his individual property, but actually assented to such claim, and hence the carrier had no excuse for refusing to comply with the demand.

It seems to us that the whole case turns upon the question whether a carrier, resting under very stringent obligations to his bailor, is bound to assume the burden of proving that a third person who makes a demand upon him for goods entrusted to him for transportation, not enforced by legal process, and of showing not only that such third person is the rightful owner, but is also entitled to the immediate possession of the goods. It seems to us that common justice would require that such burden should be assumed by the claimant, who is most likely to have the means of meeting it, and not upon the carrier, who cannot be supposed to know anything about the real ownership of the goods, and has a right to assume that the person from whom he received possession of the goods was such rightful owner; possession of personal property being evidence of title. The most that could be properly required of the carrier would be to hold the goods, notifying his bailor of the demand which had been made upon him, and let the claimant contest with the bailor the question of ownership. Under these views, we do not think that the judgment below can be sustained. The goods were not seized or demanded under any legal process. The fact that the person selected as the agent of plaintiffs to enforce their mortgage claimed to be a constable cannot affect the question, for, even where a mortgage of personal property is placed in the hands of the sheriff, with instructions from the mortgagee to seize and sell the mortgaged property, the sheriff does not act officially, but merely as the private agent of the mortgagee. *Robins v. Ruff*, 2 Hill (S. C.), 406. It is claimed, however, that the bailor, Clendenning, being present when the goods were demanded of the defendant's agent by the agent of the plaintiffs, and saying nothing, was an admission that plaintiffs were the rightful owners, and entitled to the immediate possession of the goods, and therefore defendant had no excuse for refusing to comply with the demand. We cannot take that view. We do not see what obligation rested upon him to interpose in the colloquy between the agents of plaintiffs and defendant. He delivered the goods for shipment to the defendant, and held its bill of lading obligating defendant to deliver them according to its terms, and there was no occasion for him to speak. If he had stood silently by and allowed the defendant to deliver the goods to plaintiffs, claiming to be the rightful owners, without protest or objection, we can very well see how he might have been estopped from subsequently claiming them from defendant; but we do not see how his silence when plaintiffs were making an unsuccessful demand on defendant could possibly affect the question involved here. The judgment of this court is that the judgment of the circuit court be reversed, and that the case be remanded for a new trial.

RIGHT OF WOMEN TO VOTE FOR SCHOOL OFFICERS.

The question whether the State legislature can enact a valid law empowering women to vote for school officers, has been answered in the affirmatives by several courts, because the qualifications of voters upon question, arising at school meetings have never been identical with those of constitutional electors. It is held that the authority granted to the legislature to establish a common school system carries with it the right to prescribe what officers shall be chosen, and how and by whom, and to define their powers and duties and term of office.¹ But while this may be the law, yet no person can vote for the election of any officer mentioned in the constitution unless he possesses the qualifications of an elector prescribed in that instrument.² So the Illinois constitution³ creating a county superintendent of schools, and providing that the manner of election of such officer shall be prescribed by law, does not give the legislature power to prescribe special qualifications for voters for such officers; therefore, a law giving the right to vote to women for county superintendent of schools is unconstitutional, as the constitution requires voters at any election to be males.⁴

The State Constitutions in general confide the whole primary school system to the legislature, and hence, it cannot be said that the officers of school districts, chosen pursuant to the system adopted by the legislature, are constitutional officers. The authority granted by the constitution to the legislature to establish a common school system, carries with it the authority to prescribe what officers shall be chosen to conduct the affairs of the school districts, to define their powers, their duties, their term of office, and how and by whom they shall be chosen.⁵ And so in Nebraska it is held that the provisions of the constitution in regard to elections were not intended to apply to school districts, and the act allowing women to vote at school meetings is constitutional and valid.⁶ The same doctrine is

¹ *Belles v. Burr*, 76 Mich. 1.

² *McCafferty v. Guyer*, 59 Pa. St. 109.

³ Art. 8, § 5.

⁴ *People v. English*, 139 Ill. 622, 29 N. E. Rep. 678.

⁵ *Belles v. Burr*, 76 Mich. 1. Justice Campbell dissented to this opinion in a very able argument.

⁶ *State v. Crosby*, 15 Neb. 444, 447. See, also, opinion of the judges, 115 Mass. 602.

held in Kansas, and any person having all the qualifications of an elector as defined by the constitution, except that such person is a woman, has the right to vote at elections of a school district.⁷ In the Illinois case,⁸ Justice Baker said: "It may be that it is competent for the legislature to provide that women who are citizens of the United States, and over twenty-one years of age, may vote at elections held for school directors and other school officers who are not mentioned in the constitution; but that question is not before us for decision, and we therefore express no opinion in regard to it." It will be noticed in these decisions that the point decided is the right to vote at elections of "school districts," and does not pertain to general elections of school officers. The Illinois law provides that women may vote for any officer of schools under the general or special school laws of that State.⁹ The law also provides that the trustees of the Illinois University shall be elected at the general election.¹⁰ Under this statute the question was raised whether the women could vote for the trustees at the last general election. Judge Tipton of the McLean County Circuit Court decided that they could.¹¹

The qualification of voters for school officers, or upon questions arising at school meetings, are not identical with those of electors, as defined in the constitution. It appears that the whole primary school system is confided to the legislature, and therefore, the officers of school districts, chosen pursuant to the system adopted by the legislature, are not constitutional officers. But no person can vote for the election of any officer mentioned in the constitution unless he possesses the qualifications of an elector prescribed by that instrument. And while this is the law on the question of constitutional officers, yet the legislature has the right to provide for the election of officers not named in the constitution, because the constitution has delegated this power to the legislature. The Illinois constitution provides that there may be a county superintendent of schools in each county, whose qualifications, powers, duties, compensation, and time and manner of the

election and term of officer shall be prescribed by law. Thus, mention is made in the constitution of the county superintendent of schools, and it is indicated therein that he is to be elected. In 1872, the legislature under the constitution enacted a statute which provided for such an officer in each county of the State. So, in Illinois, a county superintendent of schools is a constitutional officer. The constitution having thus made provisions for such officer, and for his election, and having prescribed the qualifications to entitle a person to vote at any election, it follows that it was intended by this instrument that no person shall have the right to vote for such officer, who does not possess such qualifications; and, hence, a woman cannot vote for such officer.¹² Notwithstanding the legislature has enacted a law giving woman the right to vote for school officers, none but an elector, under the constitution can vote for any officer named in that instrument; but where the public school system, and its management, and the choosing of the officers to control it, are by the constitution itself taken out from under the constitution, and placed in the hands of the legislature, the legislature can prescribe qualifications of the voters who shall cast their ballots for school officers.

In Michigan the law confers the right to vote upon all persons who are twenty-one, who are the parents or legal guardians of children who are included in the school census of the district, on all questions except the question of raising money by tax. Under this statute the mother or legal guardian of any child included in the census of a school district, if of the age of twenty-one years, is a legal voter upon all questions arising in the district not directly involving the raising of money by tax.¹³ The qualifications of electors as set forth in the constitution do not apply to voters in school district elections, and, therefore, the legislature may confer the right to vote at such elections upon women. As Justice Valentine says: "There is nothing in the nature of things, or in the nature of government, which would prevent it. Women are members of society, members of the great body politic, citizens, as much as men, with the same natural rights, united with men

⁷ *Wheeler v. Brady*, 15 Kan. 26.

⁸ *People v. English*, 139 Ill. 622, 29 N. E. Rep. 678.

⁹ *Hurd's Stat.* (1891), ch. 46, § 332.

¹⁰ *Hurd's Stat.* (1891) ch. 114, § 8.

¹¹ *Sept. Term*, 1892.

¹² *Art. 8, § 5.*

¹³ *People v. English*, 139 Ill. 622, 29 N. E. Rep. 678.

¹⁴ *Belles v. Burr*, 76 Mich. 1.

in the same common destiny, and are capable of receiving and exercising whatever of political rights may be conferred upon them."¹⁵ Where the school officer is not named in the constitution, and the school system given into the hands of the legislature, the legislature may provide for the election of school officers at a time and in the manner which it shall prescribe, and name the qualification of the voters who may be women and aliens. Thus, in Michigan the general school laws which govern the qualifications of voters, provide that persons may vote at school meetings who are not electors under the State constitution, as every person of the age of twenty-one years, who has property liable to assessment for school taxes in any school district, and has been a resident of the district three months before the election, is a qualified voter on all questions. This includes women and aliens.

The question to settle is, has the constitution named the officers, or has that instrument given the whole system into the hands of the legislature? If the latter plan has been adopted, then the legislature has primary power, and may give the school franchise to those even who are not electors under the State constitution.

D. H. PINGREY.

¹⁵ *Wheeler v. Brady*, 15 Kan. 26, 33.

FOREIGN CORPORATIONS—CONSTITUTIONAL LAW—FAILURE TO COMPLY WITH STATE REGULATION—INTERSTATE COMMERCE.

GUNN V. WHITE SEWING MACHINE CO.

Supreme Court of Arkansas, December 3, 1892.

Act Gen. Assem. April 4, 1887, provides that before any foreign corporation shall begin business in the State it shall file a certificate in the office of the secretary of State, designating an agent on whom process may be served, and stating its principal place of business in the State; and that, if any corporation shall fail to do so, all its contracts with citizens of the State shall be void as to the corporation. Plaintiff, a foreign corporation, without filing the certificate required by law, entered into a contract with a citizen of the State, by which it agreed to sell goods to him at stipulated prices, and on credit. Defendant became surety on a bond executed at the same time as the contract to secure payment for goods which might be sold thereunder, both the contract and the bond being executed in the State: Held, that plaintiff could recover on the bond, since the transactions of the parties were interstate commerce, and could not be affected by the act of the general assembly.

BATLLE, J. The White Sewing Machine Company was a corporation organized and doing business under the laws of the State of Ohio, and was engaged in the selling of sewing machines and other goods at Cleveland, in that State. A. I. Julian and N. H. Gunn were citizens of Faulkner county, in this State. On or about the 6th day of August, 1888, the sewing machine company entered into a contract with Julian, by which the company undertook and bound itself to sell sewing machines, and the component parts thereof, to Julian, at stipulated prices, on a credit, and Julian agreed to canvass Faulkner county, or cause it to be canvassed, "with horse, and wagon exclusively for the sale of the White Sewing Machines." Julian was to order the machines, or the component parts of the same, when he desired them to be sent to him. At the same time Julian, as principal, and Gunn, as surety, executed a bond to the sewing machine company, conditioned, among other things, that Julian would pay all sums of money that he would be owing to the company for sewing machines or otherwise. After this the company, pursuant to the terms of its contract, and on the faith of the bond executed to it sold and shipped to Julian a large number of sewing machines and other property, and Julian became indebted to it an account thereof in a large sum of money. Julian failing to pay, the company brought this action on the bond against Gunn to recover the same, or a part thereof.

The only defense made by Gunn was the company had not, at the time the bond was executed, filed any certificate in the office of the secretary of the State of Arkansas, designating an agent upon whom process could be served, and its principal place of business in this State.

Evidence was, however, adduced at the trial tending to prove, among other things, the facts before stated, and that the machines and other property were sold by the company in Ohio, and shipped to Julian in this State. The court below held that these transactions were a part of the interstate commerce of the United States, and were not affected by the laws of this State, and rendered judgment in favor of plaintiff against the defendant and he appealed.

Appellant contends that the bond sued on is void under the act of the general assembly of April 4, 1887. That act declares that before any foreign corporation shall begin to carry on business in this State it shall, by a certificate under the hand of the president and seal of such company, filed in the office of the secretary of State, designate an agent, who shall be a citizen of the State, upon whom process may be served, and also state therein its principal place of business in this State; and provided that, if any such corporation shall fail to file such certificate, all its contracts with citizens of this State shall be void as to the corporation, and shall not be enforced in any of the courts of this State in favor of the corporation.

It is conceded that the certificate required by that act was not filed by the appellee until after the debt sued on matured. Was the bond void?

In *Paul v. Virginia*, 8 Wall. 168, the court, speaking of a foreign corporation, said: "The recognition of its existence, even by other States, and the enforcement of its contracts made therein, depend purely upon the comity of those States,—a comity which is never extended where the existence of the corporation or the exercise of its powers is prejudicial to their interests, or repugnant to their policy. Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interests. The whole matter rests in their discretion."

But this right of the State cannot be so exercised as to interfere with the power of congress to regulate interstate commerce. In *Paul v. Virginia* the corporation involved in litigation was an insurance company, and was not engaged in interstate commerce. In speaking of the power to regulate commerce, in that case, the court further said: "It is undoubtedly true, as stated by counsel, that the power conferred upon congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals. * * * This state of facts forbids the supposition that it was intended in the grant of power to congress to exclude from its control the commerce of corporations. The language of the grant makes no reference to the instrumentalities by which commerce may be carried on. It is general and includes alike commerce by individuals, partnerships, associations, and corporations."

In *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 5 Sup. Ct. Rep. 826, the court, speaking of interstate commerce, said: "The power to regulate that commerce, as well as commerce with foreign nations, vested in congress, is the power to prescribe the rules by which it shall be governed; that is, the conditions upon which it shall be conducted, to determine when it shall be free, and when subject to duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted are of infinite variety. While with reference to some of them, which are local and limited in their nature or sphere of operation, the States may prescribe regulations until congress intervenes and assumes control of them, yet, when they are national in their character, and require

uniformity of regulation, affecting alike all the States, the power of congress is exclusive. * *

* Nor does it make any difference whether such commerce is carried on by individuals or by corporations."

In *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 181, 8 Sup. Ct. Rep. 737, the court after discussing this power at length, said: "The only limitation upon the power of the State to exclude a foreign corporation from doing business within its limits, or hiring offices for that purpose, or to exact conditions for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the federal government, or where its business is strictly commerce, interstate or foreign. The control of such commerce, being in the federal government, is not to be restricted by State authority." *Pensacola Tel. Co. v. W. U. Tel. Co.*, 96 U. S. 1; *Manufacturing Co. v. Ferguson*, 113 U. S. 727, 5 Sup. Ct. Rep. 739.

In *Robbins v. Taxing Dist.*, 120 U. S. 489, 7 Sup. Ct. Rep. 592, the court said: "Certain principles have been already established by the decisions of this court which will conduct us to a satisfactory decision. Among those principles are the following: (1) The constitution of the United States having given to congress the power to regulate commerce, not only with foreign nations, but among the several States, that power is necessarily exclusive whenever the subjects of it are national in their character, or admit only of one uniform system or plan of regulation. * * * (2) Another established doctrine of this court is that, where the power of congress to regulate is exclusive, the failure of congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the States, except in matters of local concern only, as hereinafter mentioned, is repugnant to such freedom."

"Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consist in the transportation, purchase, sale, and exchange of commodities. Here there can of necessity be only one system or plan of regulations, and that congress alone can prescribe." *County of Mobile v. Kimball*, 102 U. S. 691; *Escanaba Co. v. Chicago*, 107 U. S. 678, 2 Sup. Ct. Rep. 185.

"Of the class of subjects local in their nature, or intended as mere aids to commerce," on which it has been held that the authority of the States may be exerted for their regulation and management until congress interferes and supersedes it, "may be mentioned harbor pilotage, buoys, beacons to guide mariners to the proper channels in which to direct their vessels," bridges over navigable streams, wharves, wharfage, and quarantine. "State action upon such subjects," said the court in the *County of Mobile v. Kimball*, 102 U. S. 691, "can constitute no interference with the commercial power of congress, for, when that acts, the State authority is superseded. In action

of congress upon these subjects of a local nature or operation, unlike its in action upon matters affecting all the States, and requiring uniformity of regulation, is not to be taken as a declaration that nothing shall be done in respect to them, but is rather to be deemed a declaration that for the time being, and until it sees fit to act, they may be regulated by State authority."

A few cases will serve to show the character of some of the statutes which have been held by the court to be unconstitutional because they interfere with the exclusive power of congress to regulate interstate commerce, and thereby what constitutes, in part, the commerce over which such power extends. In *Hall v. De Cuir*, 95 U. S. 485, a statute of the State of Louisiana which attempted to regulate the carriage of passengers upon railroads, steamboats, and other public conveyances, and which provided that no regulation of any companies engaged in that business should make any discrimination, on account of race or color, was considered. "The case presented under the statute was that of a person of color, who took passage from New Orleans for Hermitage, both places being within the limits of the State of Louisiana, and was refused accommodations in the general cabin on account of color. In regard to this the court declared that, for the purposes of this case, we must treat the act of Louisiana of February 23, 1869, as requiring those engaged in interstate commerce to give all persons traveling in that State, upon public conveyances employed in such business, equal right and privileges in all parts of the conveyance without distinction or discrimination on account of race or color. * * * We have nothing whatever to do with it as a regulation of internal commerce, or as affecting anything else than commerce among the States." And, speaking in reference to the right of the States, in certain classes of interstate commerce, to pass laws regulating them, the court said: "The line which separates the powers of the States from this exclusive power of congress is not always distinctly marked, and oftentimes it is not easy to determine on which side a particular case belongs. * * * But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instrument to be employed after coming within the State, but directly upon the business as it comes into the State from without, or goes out from within. While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage."

In *Robbins v. Taxing Dist.*, 120 U. S. 489, 7 Sup. Ct. Rep. 592, the taxing district of Shelby county, Tenn., which includes the city of Mem-

phis, acting under the authority of a statute of that State, attempted to impose a license tax upon a drummer for soliciting, within that district, the sale of goods for a firm in Cincinnati, which he represented; but the court decided that such a soliciting of business constituted a part of interstate commerce, and that the statute of Tennessee imposing a tax upon such business, was in conflict with the commerce clause of the constitution of the United States, and was therefore void."

In *McCall v. California*, 136 U. S. 104, 10 Sup. Ct. Rep. 881, the plaintiff in error was convicted of violating an order of the city and county of San Francisco, in the State of California, which made it a misdemeanor for any one to act as an agent of a railroad company without having first paid the sum of \$25 as a license fee. He was an agent in said city and county for the New York, Lake Erie & Western Railroad Company, a corporation having its principal place of business in the city of Chicago, and which operated a continuous line of road between Chicago and New York. As such agent his duties consisted in soliciting passenger traffic in that city and county over the road he represented. He did not sell tickets for this company; neither did he receive nor pay out money on account of it. His sole offense consisted in soliciting passengers to go over his company's road, without having paid the license tax imposed upon him by said order as a condition precedent to his right to act as such agent in said county. The court held that the license fee as to such agency was a tax upon interstate commerce, and in that respect was unconstitutional. The court, speaking of the agency and tax, said: "The object and effect of his soliciting agency were to swell the volume of the business of the road. It was one of the means by which the company sought to increase, and doubtless did increase, its interstate passenger traffic. It was not incidentally or remotely connected with the business of the road, but was a direct method of increasing that business. The tax upon it, therefore, was, according to the principles established by the decisions of this court, a tax upon a means or an occupation of carrying on interstate commerce, pure and simple."

In this case the contract between the corporation and Julian, and the bond sued on, were executed in this State, and were business transacted in Arkansas. But no sales or indebtedness were created by them. The contract was only an agreement to sell, and the bond was a condition upon which the corporation agreed to sell, and a means adopted to secure the indebtedness to be contracted by sales, and both constituted a contract. They were made a foundation of a future trade between a corporation of one State and a citizen of another, and was a direct method devised to increase the business of the former, and as to them served as a basis of interstate commerce. Relying on them, the corporation sold the machines and other property

and shipped them from the State of Ohio, its place of manufacture and business, to Julian, in Arkansas; the place of sales being in Ohio. Until they ceased, according to their terms or by agreement of the parties to be of any force, they were an inducement to, and entered into; every sale, and formed a part of it. According to the principles firmly established by numerous decisions of the Supreme Court of the United States, they (the bond and contract), and the sales and shipment of the machinery and other property, were a part of the interstate commerce of the United States, which congress has the exclusive right to regulate and were and could not be affected by the act of April 4, 1887. Judgment affirmed.

NOTE.—The principal case presents a somewhat new phase of the old question as to the validity of acts of the legislature regulating sales or contracts which interfere with interstate commerce. The very vigorous dissenting opinion of Chief Justice Cockrill, concurred in by Mansfield J., shows that the conclusion of the court is not entirely free from doubt. The dissenting opinion takes the ground that a corporation created under the laws of one State has no inherent right to recognition in another State. Having the absolute power of excluding it from its jurisdiction, the State may impose such conditions upon the privilege of doing business within its limits as it may think expedient. This doctrine went without qualification for more than three-fourths of a century after the adoption of the Constitution of the United States, when the Supreme Court of the United States engrafted upon it an exception in favor of foreign corporations which were agencies of commerce. The dissenting judges, while admitting that the question has since been adjudicated in several cases, thought that there is no case in which it has been ruled that the exception applies to a foreign corporation which is not itself an agency of commerce. They think that the exceptions are limited to such corporations as are agencies of commerce, as for instance carriers of freight, passengers or communications. Thus, in *Pembina Min. Co. v. Pennsylvania*, 125 U. S. 185, 8 Sup. Ct. Rep. 737, Judge Field, who first gave expression to the exception, in speaking of the case of *Pensacola Tel. Co. v. W. U. Tel. Co.*, *supra*, said it was there held that the telegraph, as an agency of commerce and intercommunication, came under the controlling power of congress, and could not be excluded by a State from transacting its business within its limits. And again, in the same case, he says the exception extends only to a foreign corporation in the employ of the federal government, "or where its business is strictly commerce." The same language is quoted with approval through Judge Lamar in *McCall v. California*, 136 U. S. 112, 10 Sup. Ct. Rep. 881. In *Crutcher v. Kentucky*, 141 U. S. 47, 11 Sup. Ct. Rep. 851, Judge Bradley, after saying that a State could not restrict the right of a foreign corporation where "the principal object of its organization" was "the business of carrying on interstate commerce" said: "The case is entirely different from that of . . . manufacturing corporations, and all other corporations whose business is of a local and domestic nature."

Conceding that the extreme doctrine of *Robbins v. Taxing Dist.*, 120 U. S. 489, 7 Sup. Ct. Rep. 592, must be extended to foreign corporations, the conclusion does not follow, say the dissenting judges, that such a cor-

poration engaged in interstate trade—as selling merchandise—can gain a domicile in a State in violation of its statutes merely to gain a vantage ground for the sale of its goods. A manufacturing corporation, they say, is connected with commerce, for if it cannot sell, its output is worthless. Many manufacturing corporations would suspend operations if their sales were limited to the State creating them. They are thus in a measure connected with interstate commerce. But they contend that the business connection with commerce must be direct in order to work an inhibition of State action. State legislation which operates upon natural persons and corporate agencies of commerce is not invalidated by the commerce clause of the constitution unless it directly affects commerce. Citing *Sherlock v. Alling*, 93 U. S. 99; *Smith v. Alabama*, 124 U. S. 474. In *Pembina Mining Co. v. Pennsylvania*, *supra*, State legislation was upheld restricting the privilege of a foreign mining company from maintaining an office in Pennsylvania notwithstanding the maintenance of the office in that State afforded the corporation an opportunity for the sale of its foreign products. Following the decisions of the Supreme Court of the United States the only question in the principal case open to serious consideration in the judgment of the dissenting judges is, did the White Sewing Machine Company do business in the State of Arkansas? If so, it must submit to any condition the State sees fit to impose upon it. Any other rule, he contends, would bind the hands of the State authorities only to subject the public to all the corporate abuses now known or hereafter to be devised. The statement of such a doctrine, Chief Justice Cockrill thinks, is startling. The substance of his views may be stated in the following language, which is, with slight exception, his own: "The White Sewing Machine Company an Ohio corporation, maintained a resident agent at Little Rock, in this State. The proof does not show that the agent held or sold any machines or other merchandise for the company. He traveled over the State, and in the name of the company sold to individuals the exclusive right to vend its merchandise in a limited territory. The consideration for this exclusive privilege was a contract on the part of the vendee, binding himself to sell no other sewing machine, and to canvass the territory assigned to him in the interest of the White machine. The company also bound itself to sell the vendee White sewing machines upon terms fixed by the contract. As a part of this contract, the vendee was also required to enter into bond to the company, with a surety, for the payment of whatever indebtedness might be incurred by him to the corporation under the contract named or by any other means, whether the same should arise out of the purchase and sale or lease of sewing machines, or the consignment of property or merchandise, or the failure to redeliver or account for the same to the corporation, or for indebtedness arising in any manner whatever. A great number of such contracts were entered into before the corporation complied with the statute. After the one in suit was executed, the corporation complied with the law by filing a certificate designating the agent before mentioned as the person upon whom service might be had, and Little Rock as its principal place of business in Arkansas. The business continued as before. Julien signed one of these contracts and bond, with the appellant as surety, and purchased machines, as set out in my Brother Battle's opinion. The suit is to recover upon the bond thus executed. I understand that it is upon the uncontroverted facts above stated that the

court concludes that the corporation carried on business in Arkansas. The ruling that it carried on business, within the meaning of the statute, is expressly announced. The evidence does not show simply the case of a drummer soliciting contracts for purchase of merchandise to be consummated in Ohio, as was the case of *Robbins v. Taxing Dist.*, 120 U. S. 489, 7 Sup. Ct. Rep. 592. It shows that the intention of the foreign corporation to gain a domicile in Arkansas, and to carry on its business of selling, leasing and consigning machines there through local agents, as it was authorized to do in the State of Ohio. To ascertain whether the corporation did business in Arkansas, we are not required to limit our inquiry to the transaction with which the defendant alone is concerned. If it was carrying on a business in Arkansas, before and after the transaction with the defendant, it was competent for him to show that his transaction was of the general class; and when it is proved that the corporation has done acts here manifesting the intent to gain a domicile for the purpose of transacting its business, that is the beginning of its business here, and the contracts which manifest that intention are avoided by the statute. The instant the business is entered upon, the prohibition of the statute attaches, without waiting to see what the corporation will do next. Suppose the corporation had entered into a contract to hire an office in Arkansas, with the avowed purpose of establishing a domicile here. That would be sufficient proof of the beginning of business here, and, as the statute prohibits it from beginning business here until it complies with the law, it could not enforce the contract. The fact that the transaction in suit, if isolated from the others, would show one connected transaction of interstate commerce, and nothing more, will not take the case out of the statute for when it is once established that the corporation is exercising its functions in a foreign State, as distinguished from the performance of mere commercial acts to be consummated in another State, it becomes subject to State regulation. *Horn Silver Min. Co. v. New York*, *supra*; *Baker v. State*, 44 Ark. 134. That the acts of the corporation in this case are not mere commercial transactions of the character indicated, seems apparent. The sales by the corporation of exclusive territory within which the vendees might sell White sewing machines, and the covenant on their part that they would sell none other, are contracts executed and to be performed in Arkansas, and, if connected with interstate commerce, it is remotely. The terms of the contract show that they relate not only to domestic commerce, but to transactions having no connection with commerce at all; and the contract of suretyship, like the contract of insurance and indemnity, is not the subject of commerce. These matters were not transactions of interstate commerce, but were business transacted in the State independently of commerce. According to the decisions above cited they rendered the corporation amenable to State regulation."

BOOK REVIEWS.

AMERICAN RAILROAD AND CORPORATION CASES, VOLUMES 4 AND 5.

This is an admirable collection of the leading cases, decided during the year 1891, on the subject of corporation and railroad law. To many of the cases there are appended valuable and exhaustive notes. It is published by E. B. Meyers and Company, Chicago.

AMERICAN AND ENGLISH ENCYCLOPAEDIA OF LAW, Vol. 20.

This, the last volume which has made its appearance, contains a valuable article on receivers, with an exhaustive citation of the authorities. The space devoted to that topic would in itself make a fair-sized law book, there being four hundred and forty pages. The articles on record and recording acts are lengthy and well prepared, so also are those on redemption and referees. The subjects of release, religious societies, remainders, removal of causes and replevin are all discussed at length of this volume. We have heretofore taken occasion to speak in words of praise of this series of text books, and each volume adds substantially to its value. It is published by Edward Thompson Company, Northport, Long Island.

AMERICAN STATE REPORTS, Vol. 27.

Among the many instructive cases reported in this volume is *Allen v. Webber* (Wis.), to which there is an exhaustive note upon the subject of waters as boundary lines; *Tilden v. Green* (N. Y.), which involves the validity of the Tilden will; *People v. Wemple* (N. Y.), the note to which discusses in an interesting way the general subject of the constitutionality of State regulations of interstate commerce, the question in the case being as to the validity of a State imposing a tax upon corporations created in another State. This excellent series of reports, as most of our readers know, is published by Bancroft, Whitney and Company, San Francisco, the volumes being prepared in a first-class manner and in every respect worthy the reputation of that enterprising law book house.

THE LAW OF PUBLIC HEALTH AND SAFETY.

This is a new work upon a new topic, and one that is of constantly growing importance. It is not only useful for the lawyer and the physician, but also for municipal officers and boards of health. The treatise develops the subject from its foundation in the authority of the State under police power, to enact laws for the preservation of the health and safety of the people and for the prevention of disease; treating of the various methods by which that power may be exercised directly by the State or by delegation to inferior municipalities by establishing boards of health and prescribing their powers and duties and detailing those powers and duties; the mode in which they may lawfully be exercised and the limitations upon them, together with the subjects upon which municipalities may legislate in the interest of public health and safety, such as trades, occupations, buildings, foods and drinks, traffic and transportation, the practice of medicine, the disposal of the dead, quarantine, etc. The subjects of the work are logically presented and the style of the author is very good. The citation of authorities is very liberal. In view of the anticipated invasion of cholera to this country, and the necessity of quarantine measures and effective work by boards of health, this book would seem to have a timely value. The book is published by Matthew Bender, New York.

BOOKS RECEIVED.

Bank Collections. By Albert S. Bolles, Author of "Banks and their Depositors," "Bank Officers," "The National Bank Act and its Judicial Meaning," Lecturer on the Law and Practice of Banking in the University of Pennsylvania, and Editor of the "Bankers' Magazine." New York: Homan's Publishing Company, 233 Broadway. 1893.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

ALABAMA.....	2, 8, 30, 40, 47, 65
ARKANSAS.....	4, 9, 12
CALIFORNIA.....	83, 122
COLORADO.....	19
CONNECTICUT.....	34
FLORIDA.....	76, 103, 105
ILLINOIS.....	52
INDIANA.....	17, 35, 74, 84, 85, 88, 92, 109
KANSAS.....	48, 72
KENTUCKY.....	16
LOUISIANA.....	51, 94, 104
MASSACHUSETTS.....	1, 56
MICHIGAN.....	25, 32, 54, 61, 69
MINNESOTA.....	7, 22, 31, 42, 43, 116
MISSISSIPPI.....	10, 23, 81, 97, 112
MISSOURI.....	29, 38, 39, 90, 106, 121
MONTANA.....	75
NEBRASKA.....	11, 37, 44, 50, 57, 67, 70, 95, 100
NEW JERSEY.....	66, 78, 80, 113
NEW YORK.....	46, 73
OHIO.....	63
OREGON.....	41
PENNSYLVANIA.....	20, 33, 53, 59, 71, 91, 98, 117, 118, 119
SOUTH CAROLINA.....	18
TEXAS, 5, 6, 13, 27, 28, 58, 62, 82, 89, 99, 101, 102, 107, 108, 110, 111	
UNITED STATES C. C.....	15, 55, 86, 96
UNITED STATES C. C. OF APP.....	21
UNITED STATES S. C.....	26, 45
WASHINGTON.....	68
WEST VIRGINIA, 3, 14, 24, 36, 49, 60, 64, 77, 79, 87, 93, 114, 115, 120	

1. ADMINISTRATORS—Claim.—The fact that an administrator, claiming part of a certain fund as his own, treats the whole as assets of the estate, does not prevent him from recovering as a creditor the amount claimed.—BUCKLEY V. BUCKLEY, Mass., 32 N. E. Rep. 863.

2. ADMINISTRATORS—Right of Possession.—An administrator has the right to the possession of the real estate of his intestate for the purpose of administration, subject only to the rights of dower, quarantine, and homestead; and, when asserted by him, it intercepts the descent of the lands to heirs.—BANKS V. SPEERS, Ala., 11 South. Rep. 841.

3. ADVERSE POSSESSION—Color of Title.—Any written instrument, however defective or imperfect, and no matter from what cause invalid, purporting to sell, transfer, or convey title to land, which shows the nature and extent of the party's claim, constitutes "color of title," within the meaning of the law of adverse possession.—MULLAN'S ADM'R V. CARPER, W. Va., 16 S. E. Rep. 527.

4. ADVERSE POSSESSION—Evidence.—Payment of taxes and assertion of ownership do not constitute possession of land.—BROWN V. BOQUIN, Ark., 20 S. W. Rep. 813.

5. ALIEN LAND LAW.—Under Const. 1836, providing that "no alien shall hold land in Texas except by titles emanating directly from the government of this republic," an alien could take title to land by deed, and his title could be defeated only by a proceeding in the nature of office found.—WILLIAMS V. BENNETT, Tex., 20 S. W. Rep. 856.

6. APPEAL.—Where the pleadings disclose issues between plaintiff and defendant, and between plaintiff and a copartnership of which defendant is a member, a judgment against defendant alone, there being no adjudication of the issues involved between plaintiff

and the copartnership, is not final, and from it no appeal will lie.—FRANK V. TATUM, Tex., 20 S. W. Rep. 809.

7. APPEAL—Effect of Reversal.—Where a judgment is reversed in this court upon the ground that the findings of fact on which such judgment is based (be they one or more) are not justified by the evidence, a new trial must inevitably follow.—BACKUS V. BURKE, Minn., 53 N. W. Rep. 1013.

8. ASSIGNMENT FOR CREDITORS—Exception.—An exception, in an assignment for the benefit of creditors, of all exemptions to which the assignor is entitled, is not void for uncertainty.—FRANK V. MYERS, Ala., 11 South. Rep. 832.

9. ATTORNEY AND CLIENT—Gift—Replevin.—An attorney, who had agreed to defend a prisoner confined in jail for a stipulated fee, which was duly paid him, afterwards, and while the relationship of attorney and client continued, received from the client a promise to give him a mule in case the attorney succeeded in securing an acquittal. The client was acquitted, but did not deliver the mule: Held, in an action of replevin for the mule, that the executory promise conferred no title on the attorney.—MARSHALL V. DOSSETT, Ark., 20 S. W. Rep. 810.

10. BANKS—Rights of Creditors.—A check was forwarded by a collecting bank to the bank on which it was drawn, with directions to collect, and apply the proceeds to a debt owing to the drawee bank by the collecting bank: Held that, where the drawee bank failed on the day it received the check, and before it had assented to the direction of the collecting bank, the refusal to accept and pay the check out of the funds of the drawer then to his credit gives only a right of action against the drawee bank on the check, and does not enable the drawer, who subsequently paid the check, either to sue the collecting bank, or entitle him to priority over the other creditors of the drawee bank.—ROMANSKI V. THOMPSON, Miss., 11 South. Rep. 828.

11. BILL OF EXCEPTIONS—Time for Settling.—The time within which a party must prepare and serve a bill of exceptions begins to run from the final adjournment of the term of court at which the cause was decided, and not from the date of the formal entry of the judgment by the clerk upon the court journal.—STATE V. HOPEWELL, Neb., 53 N. W. Rep. 990.

12. BOND—Execution.—Proof that the parties who signed a bond did so on the condition that other persons named therein as sureties would also sign it is competent to show that it was never completely executed.—STATE V. WALLACE, Ark., 20 S. W. Rep. 811.

13. CARRIERS—Failure to Furnish Cars.—A common carrier, who agrees to furnish at a certain time and place, if they can be gotten, cars for the transportation of live stock, and who has the cars applied for on hand at the time and place specified, is not relieved from liability for damages for refusing to receive and ship the stock, after tender of the same by the person making application, because of an unusual and unprecedented accumulation of live stock at such time and place, received *in transitu* from connecting carriers and local shippers.—CROSS V. McFADEN, Tex., 20 S. W. Rep. 846.

14. CARRIERS—Passenger—Negligence.—A person having a ticket for passage upon a railroad, who boards a freight train which does not carry passengers, believing the ticket good on that train, is to be treated as a passenger, and is not a trespasser.—BOGESS V. CHESAPEAKE & O. RY. CO., W. Va., 16 S. E. Rep. 525.

15. CARRIERS OF FREIGHT—Limitation by Contract.—The shipper, by rail, of a horse worth \$1,500, signed a live-stock contract providing that "the liability of the company for valuable live stock shall not exceed \$100 for each animal." Held, that this was not merely an agreed valuation of the animal, but an attempt to limit the carrier's responsibility for negligence, and was therefore void.—EELLS V. ST. LOUIS, K. & N. W. RY. CO., U. S. C. C. (Iowa), 52 Fed. Rep. 903.

16. CONFLICT OF LAWS—Death by Wrongful Act.—

Where one domiciled in Kentucky is killed by wrongful act in Tennessee, suit under the Tennessee statute may be brought by an administrator in Kentucky, where there is in force a similar statute.—*WINTUSKA'S ADM'R. v. LOUISVILLE & N. R. Co.*, Ky., 20 S. W. Rep. 819.

17. CONSTITUTIONAL LAW—Legislative Apportionment.—Though exact equality in apportionment cannot be attained, the constitution requires the legislature, in proportioning the State into senatorial and legislative districts, to approximate as nearly thereto as may be, and it has no legislative discretion to do otherwise.—*PARKER v. STATE*, Ind., 32 N. E. Rep. 836.

18. CONSTITUTIONAL LAW—Railroads—Negligence.—Gen. St. § 1511, makes every railroad liable in damages for the property of persons injured by fire from its locomotives, but allows it to insure any such property: Held, not a taking of property from a railroad without due process of law, or a denial of equal protection, within Const. U. S. amend. 14, although the liability thus created is supposed to attach irrespective of negligence.—*MCCANDLESS v. RICHMOND & D. R. Co.*, S. Car., 16 S. E. Rep. 429.

19. CONSTITUTIONAL LAW—Scalp Bounty.—The bounty law, providing a premium for any person who shall kill any wolf, coyote, bear, or mountain lion, which premium shall be paid by the county treasurer, and the amount credited to such officer in his settlement for State taxes with the State treasurer, is in conflict with Const. art. 5, § 33, which provides that "no money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof," and is void.—*INSTITUTE FOR EDUCATION OF MUTE AND BLIND v. HENDERSON*, Colo., 31 Pac. Rep. 714.

20. CONSTITUTIONAL LAW—Special Legislation.—Act May 8, 1876, provides that passenger railways in cities of the first class may use other than animal power whenever authorized by the city councils, and repeals all limitations contained in charters of passenger railway companies restricting them to the use of horse power: Held, that the act is not local or special legislation, within the inhibition of Const. art. 3, § 7, but is a general law, and upon a subject proper for municipal classification.—*REEVES v. CONTINENTAL RAILWAY Co.*, Penn., 25 Atl. Rep. 516.

21. CONTRACTS—Manufacturer's Warranty.—Where a contractor agrees to build an experimental machine, the first under a new patent, on plans to be approved by the patentee, with warranty for the workmanship and materials of his own shop, but expressly excepting from the warranty the boiler and other parts bought outside, and the working of the machine as a whole, the relative capacity of the boiler and engine is not a matter of the contractor's workmanship, nor is liable for an error therein.—*CYCLONE STEAM SNOWPLOW Co. v. VULCAN IRON WORKS*, U. S. C. C. of App., 52 Fed. Rep. 920.

22. CONTRACT—Parol Evidence.—A written contract falling within the statute of frauds cannot be varied by a subsequent oral agreement of parties; and this, whether the variation consists of adding to or subtracting from its terms.—*BURNS v. FIDELITY REAL ESTATE Co.*, Minn., 53 N. W. Rep. 1017.

23. CORPORATIONS—Assignment for Creditors.—A preferential assignment may be made by an insolvent private corporation.—*PALMER v. GEORGE W. HUTCHISON GROCERY Co.*, Miss., 11 South. Rep. 769.

24. CORPORATIONS—Mortgage—Ultra Vires.—Where a bill is filed by a party representing himself to be a mortgagee of real estate, for the purpose of enforcing a mortgage which purports to have been regularly signed, sealed, and acknowledged by the president and treasurer of a corporation chartered under the laws of the State of New York, which real estate is situated in this State objection to the validity of said mortgage cannot be made by the company on the ground that it is *ultra vires*, but must be made by a stockholder or by stockholders of said company.—

BOYCE v. MONTAUK GAS COAL Co., W. Va., 16 S. E. Rep. 501.

25. CORPORATION—Stockholders.—A declaration in an action by a stockholder against the other members of a corporation states a sufficient cause of action when it appears therefrom that a member of the corporation who is under obligation to carry the corporation paper has introduced a dummy into the board of directors and, confederating with him, has directed the execution of a mortgage of the corporate property to another confederate, to whom the paper has been assigned for the purpose of avoiding these obligations, and by foreclosing the mortgage thus obtained has wrecked the corporation, and appropriated its assets.—*HANLEY v. BALCH*, Mich., 53 N. W. Rep. 954.

26. CREDITORS' BILL—Foreign Judgment.—A creditor's bill founded on a judgment recovered in Connecticut against a corporation of that State cannot be maintained in a United States Circuit Court in New York against a citizen of that State to enforce his liability on an unpaid subscription to the stock of the corporation, when no judgment has been obtained or execution issued against the corporation within the latter State, and no allegations are made showing that it is impossible to obtain such judgment.—*NATIONAL TUBE WORKS Co. v. BALLOU*, U. S. S. C., 13 S. C. Rep. 165.

27. CRIMINAL LAW—Attorneys.—A proceeding to strike the name of an attorney from the roll of attorneys for fraudulent conduct, such as swindling, is a criminal proceeding: and the court of criminal appeals has exclusive jurisdiction of an appeal in such matter, under Const. art. 5, § 5.—*SCOTT v. STATE*, Tex., 20 S. W. Rep. 831.

28. CRIMINAL LAW—Murder—Threats.—The jury was instructed that if deceased insulted defendant's wife, and defendant, on hearing of it, became so angered as to render his mind incapable of cool reflection, and while in such condition he immediately, or as soon thereafter as he met deceased, killed him, he would not be guilty of murder: Held, that the instruction was not subject to the objection that it required the jury to believe defendant was acting under the impulse of passion, whereas the question for the jury was whether an insult was given, and if so passion would be presumed.—*KNOWLES v. STATE*, Tex., 20 S. W. Rep. 825.

29. CRIMINAL LAW—New Trial.—Where a judge who has tried a criminal case dies after overruling a motion for a new trial, but before passing upon the bill of exceptions, his successor has no right, at a subsequent term, to grant the defendant a new trial, since, under Rev. St. 1889, § 2171, he has power to sign the bill of exceptions, and thus allow the defendant to have his case reviewed on appeal.—*STATE v. WALLS*, Mo., 20 S. W. Rep. 883.

30. DEATH BY WRONGFUL ACT—Punitive Damage.—Code 1886, § 2589, allowing the personal representatives of one whose death is caused by wrongful act to recover "such damages as the jury may assess," is punitive in its nature, and requires the jury to assess without regard to actual compensation, such damages as they may deem necessary to effect the punishment of defendant.—*RICHMOND & D. R. Co. v. FREEMAN*, Ala., 11 South. Rep. 800.

31. REPRESENTATIONS BY EXECUTOR.—A representation by the executor made to induce the person to so pay money, that the estate is solvent and able to pay all its debts, is, in an action by such persons against the executor for deceit in making such representation immaterial.—*WINSTON v. YOUNG*, Minn., 53 N. W. Rep. 1015.

32. DEED—Delivery.—A charge that for a grantor, who was at the time register of deeds, to make and record a deed with intent to pass title would be a sufficient delivery, and that the possession of the deed by the grantee would be *prima facie* evidence of title in her, and that the jury should determine the question of actual delivery from the evidence on these points, is proper.—*FENTON v. MILLER*, Mich., 53 N. W. Rep. 957.

33. **DEED—Description.**—Defendant conveyed to M a tract of land described by metes and bounds, and calling for "other land of P. P. Brice" (defendant) as adjoiner on the east, "together with the right of mining and removing all the mineral that may be reached under said Brice's land, from the land above described and hereby conveyed." Held, that the description of the mineral conveyed was sufficiently certain, it being equivalent to saying that it was the mineral in the land of defendant adjoining land conveyed by him to M on the east.—*PEART V. BRICE*, Penn., 25 Atl. Rep. 537.

34. **DESCENT AND DISTRIBUTION—Land of Decedent.**—Where a person claims to hold the land of an ancestor against an heir by virtue of a sale of the land to satisfy the ancestor's debts, he must show that such debts existed, and that the land was sequestered for their payment by due process of law.—*SHELTON V. HADLOCK*, Conn., 25 Atl. Rep. 453.

35. **DRAINAGE—Illegal Assessment.**—Where plaintiffs allege that a ditch has been constructed, of no benefit to them, and the cost thereof assessed on their land by the surveyor, and the proceedings authorizing the construction of the ditch have been declared void, but this was not done until the time had expired for an appeal from the assessment, and it does not appear that plaintiffs knew of the worthlessness of the ditch, or were in law chargeable with knowledge of that fact in time to appeal, they may maintain an action for an injunction to restrain the collection of taxes.—*MILLIKAN V. WOOL*, Ind., 32 N. E. Rep. 528.

36. **EJECTMENT—Title.**—In an action of ejectment, where the plaintiff and defendant derive their title from the same grantor, it is unnecessary that the plaintiff, in making a *prima facie* case, should trace his title further back than to said grantor.—*CARRELL V. MITCHELL*, W. Va., 16 S. E. Rep. 453.

37. **ELECTIONS AND VOTERS.**—Under the provisions of section 20, ch. 26, Comp. St., it is the duty of judges and clerks of election to return a true list of the persons voting at that election, and certify the same. It is also the duty of the judges and clerks to certify the aggregate number of votes cast for each person voted for, but it is no part of their duty to certify that certain persons received a specified number of votes as a Democrat, and a certain number as People's Independent or otherwise, and such certification has no force or effect.—*STATE V. STEIN*, Neb., 53 N. W. Rep. 929.

38. **EMINENT DOMAIN—Waiver of Compensation.**—A direction by a mortgagee to the owner of the equity of redemption to get all the damages possible from a railroad company that proposes to construct its road across the mortgaged land does not amount to a waiver of payment of compensation as a condition precedent to entry by the railroad company.—*SNYDER V. CHICAGO ETC.*, R. Co., Mo., 20 S. W. Rep. 885.

39. **EQUITY—Adoption.**—B agreed in writing to adopt E, and leave her his property at his death, and her parents, in consideration thereof, surrendered all control over her, and she lived with him as his child until her death: Held, that the surrender by the parents of all control of E was a valuable consideration for B's promise to adopt her, and that E's heirs would be entitled to a specific performance of the agreement by which B agreed that she should inherit his property at his death, though the instrument of agreement was not sufficient to constitute an adoption.—*HEALEY V. SIMPSON*, Mo., 20 S. W. Rep. 891.

40. **EQUITY—Real Party in Interest.**—A mortgage given to the cashier of a bank as security for a loan made by the bank may be enforced by suit in the name of the bank, without assignment or indorsement; and a suit to foreclose such a mortgage cannot be maintained by the cashier alone, but the bank should be joined with him as a necessary party.—*MOORE V. POPE*, Ala., 11 South. Rep. 540.

41. **EVIDENCE—Contract.**—Defendant bought timber subject to a chattel mortgage to plaintiff, and as alleged by the latter, agreed with him to pay the debt se-

cured by the mortgage. On an issue as to whether defendant made such agreement, plaintiff offered evidence that when the sale of the timber was made to defendant, and, as was claimed, a few hours before the alleged contract, defendant expressed an intention of making an agreement with plaintiff to pay off his mortgage: Held, that the evidence was admissible as a part of the *res gestae*.—*GARRISON V. GOODALE*, Oreg., 31 Pac. Rep. 709.

42. **EXECUTION—Sale.**—An execution sale of real estate, where there is personal property subject to levy, within the knowledge of the execution creditor, is not absolutely void; but if prejudicial, and especially if fraudulent or unconscionable, such sale may be set aside or vacated, and the proper relief may be sought in a suit in equity brought directly for such purpose.—*JAKOBSEN V. WIGEN*, Minn., 53 N. W. Rep. 1016.

43. **EXPERT TESTIMONY.**—Certain hypothetical questions to expert witnesses held to have been properly excluded—first, because they did not fully and accurately state the facts in evidence; and second, because the matter inquired of, was not, under the circumstances, the subject of expert testimony.—*BRIGGS V. MINNEAPOLIS ST. RY. CO.*, Minn., 53 N. W. Rep. 1029.

44. **FALSE IMPRISONMENT—Malice.**—False imprisonment is the unlawful restraint of a person without his consent, either with or without process of law. The question of malice in an action for false imprisonment is immaterial, except so far as it affects the measure of damages.—*JOHNSON V. BOUTON*, Neb., 53 N. W. Rep. 995.

45. **FEDERAL COURTS—Supreme Court—Jurisdiction.**—In a proceeding to restrain the establishment of harbor lines on the shores of Elliott bay, at the city of Seattle, Wash., the petitioner averred that he was, and had been for 30 years last past, the owner of the property commonly known as "Yesler's Wharf and Dock," and the upland abutting on the shore of Elliott bay upon which said wharf and dock were constructed. At the hearing, it was stated that petitioner was the original patentee of the United States under the donation act of September 27, 1850, but this fact was not averred in the petition: Held, that, whatever might be inferred from the foregoing allegations as to the character and source of petitioner's title, the allegation did not sufficiently claim any title, right, privilege, or immunity under the constitution or a statute of or authority exercised under the United States, the denial whereof by a State supreme court would be reviewable by the Supreme Court of the United States.—*YESLER V. BOARD OF HARBOR LINE COM'RS*, U. S. S. C., 13 S. C. Rep. 190.

46. **FRAUDULENT CONVEYANCE—Chattel Mortgages.**—Where a bill of sale was executed in payment of a precedent debt, the use of the word "security" by the vendee upon the witness stand in describing the transaction is not sufficient to fix the character of such instrument as a mortgage.—*PRENTISS TOOL & SUPPLY CO. V. SCHIRMER*, N. Y., 32 N. E. Rep. 849.

47. **GARNISHMENT—Delivery of Property.**—Where a garnishee in an attachment suit, after judgment in favor of plaintiff, delivers the property condemned in his hands to the payment of the judgment to the officer of the court, a party who is not suggested by the garnishee as a claimant cannot thereafter interpose a claim thereto, and maintain a claim suit, by making affidavit and filing a bond before sale of the property, as in case of an actual levy of an attachment; no such proceeding being prescribed by state ute.—*HEYWARD V. PHILLIPS BUTTOFF MAN'FG CO.*, Ala., 11 South. Rep. 837.

48. **HIGHWAY—Crossing Railroad Track—Damages.**—A railroad company is entitled to damages for the location of a public highway over its right of way.—*CHICAGO, K. & W. R. CO. V. BOARD OF COM'RS OF CHAUTAUQUA COUNTY*, Kan., 31 Pac. Rep. 736.

49. **HIGHWAY—Obstruction.**—If a railroad company, under authority from a county court giving it license to build its road upon, along or across public highways—

upon the express condition that it shall restore such highways to their former state, or to such state as not unnecessarily to have impaired their usefulness, takes possession of a part of a public highway, and constructs its road upon it, but fails to restore the highway to such state as is required by law, it is guilty of maintaining a nuisance, and may be indicted under section 45, ch. 43, of the Code, notwithstanding it has such authority from the county court.—*STATE V. MONONGAHELA R. R. CO.*, W. Va., 16 S. E. Rep. 519.

50. **HOMESTEAD**—Mortgage by Husband Alone.—A mortgage on the homestead of married persons in this State is of no validity, as against the homestead right, unless signed and acknowledged by both husband and wife.—*WHITLOCK V. GOSSON*, Neb., 53 N. W. Rep. 980.

51. **HUSBAND AND WIFE**—Separate Property.—A married man, intending to purchase property with his separate funds, and to hold it for his individual account, must make that intention manifest at the time of the purchase. The property would otherwise be held under an uncertain floating title, neither admissible nor permissible.—*HERO V. BLOCK*, La., 11 South. Rep. 821.

52. **INFANT**—Bill to Vacate.—An infant, after attaining majority, may, without leave of court, file a bill to vacate a decree obtained by her during her minority, since such a bill is an original bill, and not a bill of review.—*GRIMES V. GRIMES*, Ill., 32 N. E. Rep. 847.

53. **INJUNCTION**—Conspiracy—Master and Servant.—An injunction will lie to restrain persons from attempting by force, menaces, or threats to prevent workmen from working on such terms as they may agree on with any employer.—*MURDOCK V. WALKER*, Penn., 25 Atl. Rep. 492.

54. **INSURANCE**—Waiver of Conditions.—An insurance policy on plaintiff's lumber contained a warranty by the assured that a clear space of 150 feet should be maintained between the property insured and any wood-working or manufacturing establishment, any violation of this warranty to render the policy null and void: Held, in a suit on the policy, that defendant is estopped from avoiding the same for deficiency of clear space, where its agent, when he wrote the policy, knew the condition of the insured property, and that a clear space of 150 feet actual measurement did not exist, and that plaintiff could not control a clear space for that distance.—*MICHIGAN SHINGLE CO. V. STATE INVESTMENT & INSURANCE CO.*, Mich., 53 N. W. Rep. 945.

55. **INTERSTATE COMMERCE ACT**—Undue Preference.—Where two connecting lines agree on a joint through tariff, such joint tariff, or the share of it which either takes, is not the standard by which to determine whether either line violates, by its local rates, section 3 of the interstate commerce act, forbidding undue preferences.—*TOZIER V. UNITED STATES*, U. S. C. C. (Mo.), 52 Fed. Rep. 917.

56. **INTOXICATING LIQUOR**—Minors—Evidence.—On the trial for selling liquor to minors, the court properly excluded evidence of defendant's reputation in regard "to observing the conditions of his license, and particularly as to selling or permitting the sale of intoxicating liquors to minors," and also evidence of the reputation of his saloon; since the rule that a defendant may put in evidence his general good reputation in regard to the elements of character involved in the commission of the crime charged against him applies to acts involving moral turpitude but not to acts prohibited by penal statutes.—*COMMONWEALTH V. NAGLE*, Mass., 32 N. E. Rep. 861.

57. **JUDGMENT**.—In this State an action can be maintained on a domestic judgment.—*ELDRIDGE V. AULTMAN, MILLER & CO.*, Neb., 53 N. W. Rep. 1008.

58. **JUDGMENT**—Collateral Attack.—When land of a decedent has been sold under an order of court, an action of trespass to try title cannot be maintained by the heirs against the purchaser to recover the land, on the ground that the order of sale was obtained by the fraud of the purchaser and the administrator, since it

is a collateral attack on such order.—*STORER V. LANE*, Tex., 20 S. W. Rep. 852.

59. **LANDLORD AND TENANT**—Lease.—Where a lease of a building for the term of two years stipulates for a reduced rental "for the term of one year only," should the lessee fail to obtain a retail liquor license, preventing him from using the demised premises in the retail liquor business, as intended by the parties, a failure to obtain the license for the second year, after having obtained it for the first, entitles the lessee to the reduction for the second year, as it is immaterial in which year the failure occurs.—*REA V. GANTER*, Penn., 25 Atl. Rep. 539.

60. **LANDLORD AND TENANT**—Surrender of Lease.—If tenant for life or years take a new lease of the reversioner of the same premises let in the former lease, it is a surrender in law of the first lease.—*EDWARDS V. HALE*, W. Va., 16 S. E. Rep. 487.

61. **LIBEL**.—An article was published in defendant's paper, setting forth, in sensational style, that plaintiff was engaged to be married to a young lady; that he had ordered his wedding supper, and hired a minister to perform the ceremony; and that a few hours before the marriage was to be solemnized the lady had eloped with his cousin. It also charged plaintiff with a denial of the engagement, and of any relationship with the person alleged to be his cousin: Held, that such publication, if untrue, was libelous, as tending to bring ridicule and contempt on plaintiff.—*HATT V. EVENING NEWS ASS'N*, Mich., 53 N. W. Rep. 952.

62. **LIMITATION OF ACTIONS**—Carriers of Passengers.—A complaint against a railroad company alleged that defendant's servants failed to stop the train at K, the destination named in plaintiff's ticket, but ran about two and one-half miles beyond, where it came to a halt; that such servants willfully deceived him as to the distance it was to K, and caused him to leave the train at such point, at a late hour of night; that the night was dark, cold, and rainy, and in making his way back to K he slipped and fell many times, and from such falls received injuries to his person, and suffered great mental and physical pain: Held, that the action was in tort, and therefore subject to the one year statute of limitations.—*GALVESTON, H. & S. A. RY. CO. V. ROEMER*, Tex., 20 S. W. Rep. 843.

63. **MASTER SERVANT**—Defective Appliances—Pleading.—In an action by a servant against his master for an injury resulting from the negligence of the latter in furnishing appliances, or in caring for the premises, where the work is to be done, the plaintiff must aver want of knowledge on his part of the defects causing the injury, or that, having such knowledge, he informed the master, and continued in his employment upon a promise, express or implied, to remedy the defects. An averment that the injury occurred without fault on his part is not sufficient.—*CHICAGO & O. COAL & CAR CO. V. NORMAN*, Ohio, 32 N. E. Rep. 857.

64. **MASTER AND SERVANT**—Negligence.—A master is not liable for an injury to his servant caused by the negligence of such fellow servant as exempts the master from liability.—*BEHRING'S ADM'R V. CHESAPEAKE & O. RY. CO.*, W. Va., 16 S. E. Rep. 435.

65. **MORTGAGE**—Attorney's Fee.—A provision in a mortgage for the payment of "attorneys' fees incurred in collecting the debt or in foreclosing the mortgage" is available to the mortgagee in a suit by the mortgagee to enjoin the foreclosure of the mortgage by an advertisement under a power of sale therein contained; and, on a decree in the mortgagee's favor, it is proper to allow an attorney's fee as provided in the mortgage.—*SPEAKMAN V. OAKS*, Ala., 11 South. Rep. 886.

66. **MORTGAGES**—Foreclosure.—Where a mortgage bond has been discharged, by reason of a surrender thereof by the mortgagee to the mortgagor, in consideration of the conveyance of such land to him, the mortgagee, still holding the mortgage deed as a muniment of title, is entitled to a decree of strict foreclosure of his mortgage against judgment creditors of the

mortgagor having liens on such land, who became creditors of the mortgagor while he still owned the equity of redemption of the land.—*LOCKARD V. HENDRICKSON*, N. J., 25 Atl. Rep. 512.

67. **MORTGAGE**—Payment—Bona Fide Purchaser.—A purchaser of real estate who has paid off a prior mortgage thereon, in the belief that he was the owner of the property purchased, will, on a failure of his title, be subrogated to the right of the mortgagee as against the mortgagor and others who are in equity liable for the mortgage debt.—*BETTS V. SIMS*, Neb., 53 N. W. Rep. 1005.

68. **MORTGAGE**—Priorities.—Where the owner of a mortgage securing two notes, the first of which has matured, sells the second, and delivers the mortgage to be primarily held as security for its payment, and afterwards transfers the other, the first transferee is entitled to priority on distribution of the proceeds of a foreclosure of the mortgage, and it is error to order a *pro rata* application on the notes.—*MILLER V. WASHINGTON SAV. BANK*, Wash., 31 Pac. Rep. 712.

69. **MUNICIPAL CORPORATIONS**—Defective Sidewalks—Evidence.—In an action against a city for personal injuries received by plaintiff by a fall on a defective sidewalk, evidence of subsequent injuries to others by the same defect is not admissible to show constructive notice of the defect to the city.—*MCGRAIL V. CITY OF KALAMAZOO*, Mich., 53 N. W. Rep. 955.

70. **MUNICIPAL CORPORATIONS**—Negligence—Surface Water.—Under section 31, ch. 9, Gen. St. 1873, a city of the second class was authorized to establish the grade of its streets by ordinance. In an action for damages for flooding the plaintiff's cellar, in which his goods were stored, caused by filling up the street adjacent to the lot without the grade being established: Held, that an instruction which, in effect, told the jury that the grade might be established otherwise than by ordinance was erroneous.—*THEMANSON V. CITY OF KEARNET*, Neb., 53 N. W. Rep. 1009.

71. **MUNICIPAL CORPORATIONS**—Public Improvements.—The curative act of May 16, 1891, providing for the completion of unauthorized public improvements and the assessment of the cost, contemplates that the assessment be made on the basis of a *quantum meruit* and an assessment based on the contract price of the work, as shown by the city books, without even a finding that the contract price was a fair price, is erroneous.—*IN RE CITY OF PITTSBURGH*, Penn., 25 Atl. Rep. 528.

72. **MUTUAL BENEFIT INSURANCE**—Where a member of a mutual benefit insurance company is suspended for non-payment of assessments, and neglects during his lifetime to secure his re-instatement in accordance with the terms of his certificate and the provisions of the order, his restoration to membership cannot be effected after his death by payment of the sum due from him to the company at the time of his death, though the period within which, if alive, he could have secured his re-instatement, has not yet expired.—*MODERN WOODMEN OF AMERICA V. JAMESON*, Kan., 31 Pac. Rep. 733.

73. **NATIONAL BANKS**—Insolvency.—Payment of a certificate of deposit by an insolvent national bank more than six weeks before its suspension, and at a time when it was in apparent good standing, and its insolvency known only by its cashier, who fraudulently concealed it, and when there was no evidence to show an intent on the part of the cashier to give preference to the depositor, is not void, under Rev. St. U. S. § 5242, providing that all payments by a national bank, made in contemplation of insolvency, with a view of preferring a creditor, are void.—*HAYES V. BEARDSLEY*, N. Y., 32 N. E. Rep. 855.

74. **NEGOTIABLE INSTRUMENT**—Married Woman.—Under Rev. St. 1891, § 8115, which renders void contracts of suretyship entered into by a married woman, one who sues on a note executed jointly by a married woman and her husband must show that she was not a surety for the husband; but the rule is different where she executes her individual note, as no presumption

arises in such a case that she executed it as surety for her husband or for any other person.—*POTTER V. SPEETS*, Ind., 32 N. E. Rep. 811.

75. **NEW TRIAL**—Dismissal.—Code Civil Proc. § 298, provides that a party intending to move for a new trial must file or serve notice of his intention, designating the grounds thereof, and whether "the same will be made upon affidavits, or the minutes of the court, or a bill of exceptions, or a statement of the case." Held that, where the notice omits to state on what the motion will be made, an appeal from an order overruling the motion will be dismissed, unless the defect has been waived by the adverse party.—*GREGG V. GARRETT*, Mont., 31 Pac. Rep. 721.

76. **OFFICERS**—Powers of Governor.—The governor has power, under section 15 of the executive article of the constitution, when acting within the authority there conferred, to hear and decide as to the existence of any alleged neglect of duty in office as a ground for suspending an officer. This authority, whether judicial or administrative in its nature, is vested by the constitution in the governor, as a member of the executive department, and does not appertain to, and cannot be exercised by, the courts.—*STATE V. JOHNSON*, Fla., 11 South. Rep. 845.

77. **PARENT AND CHILD**—Advancements.—Whether a conveyance or transfer of property from parent to child is an advancement depends on the intention of the parent in making it.—*ROBERTS V. COLEMAN*, W. Va., 16 S. E. Rep. 482.

78. **PARTNERSHIP**—If, under the statute of New York regulating the formation of limited partnerships, the special partner pays in unconditionally the sum specified, and, at the same time, the certificate is duly signed and sworn to, and then the moneys so contributed are paid away for the purposes of the firm, and after that, on the same day, the certificate is duly filed, held, that thereby a limited co-partnership is legally constituted, it appearing that the transaction was *bona fide*.—*VERNON V. BRUNSON*, N. J., 25 Atl. Rep. 511.

79. **PARTNERSHIP**—Accounting.—Under ordinary circumstances, and in the absence of an agreement to that effect, one partner cannot charge his copartners with any sum for compensation, whether in the shape of salary, commission, or otherwise, on account of his own trouble in conducting the partnership business; and in this respect a managing or acting partner is in no different position from any other partner.—*HYRE V. LAMBERT*, W. Va., 16 S. E. Rep. 446.

80. **PARTNERSHIP**—Duration.—A partnership agreement between T and D, providing that, if T survives, the entire interest of the partnership business shall vest in him on the payment of \$5,000 to D's heirs, and that, if D survives, such interest shall become D's absolutely, is not a partnership at will, and cannot be dissolved on simple notice by one partner to the other.—*DOBBS V. TATEM*, N. J., 25 Atl. Rep. 544.

81. **PARTNERSHIP**—Notice of Dissolution.—One W sold his interest in a firm to his copartner, D, taking a note for the purchase money. Afterwards he loaned money to D, for which he also took a note. Both notes were preferred in an assignment subsequently made by D: Held that, though W, by failing to give notice of his withdrawal from the firm, continued to be liable as a partner, he was not in fact a partner, and the assignment could not be assailed on the ground that it sought to apply firm assets to the payment of a debt due to one of the partners.—*RICHARDSON V. DAVIS*, Miss., 11 South. Rep. 790.

82. **PARTNERSHIP**—Retiring Partner.—A partner who is made known by his fellow partner to a third person, in order to obtain credit, cannot afterwards claim to be a dormant partner as to such person, so as to relieve him from the necessity of giving notice upon retiring from the partnership.—*MILMO NAT. BANK V. CARTER*, Tex., 20 S. W. Rep. 836.

83. **PARTNERSHIP**—Settlement.—Where property is

purchased out of the funds of an individual partner, but the other partner receives his share of the benefit, and it is considered by both a partnership transaction, the former is, notwithstanding an agreement of liquidation, wherein the entries in the books as they stood at the time were to be treated as correct, entitled to credit.—*BOSKOWITZ V. NICKEL*, Cal., 31 Pac. Rep. 732.

84. **PLEADING—Negligence.**—In an action against a railroad company for injuries to a passenger, a complaint which alleges that, after the train arrived at plaintiff's destination, plaintiff immediately proceeded as far as the door of the car, and while in the act of stepping out of the door, onto the platform, the train suddenly started without warning, throwing plaintiff on the floor of the car, sufficiently shows plaintiff's freedom from contributory negligence to withstand an objection raised for the first time in arrest of judgment; the rule being that, on motion in arrest, all intendments are taken in favor of the pleading, and, if it contains a statement of facts sufficient to bar another suit for the same cause of action, its defects, if any, are cured by the verdict.—*OHIO & M. RY. CO. V. SMITH*, Ind., 32 N. E. Rep. 809.

85. **PLEADING—Negligence.**—In an action against a railroad company for personal injuries caused by falling into an unguarded excavation adjoining defendant's track in a city, it is not necessary to state in the complaint that plaintiff was ignorant of the existence of the ditch, where it is alleged that defendant was negligent and plaintiff was without fault.—*OHIO & M. RY. CO. V. LEVY*, Ind., 32 N. E. Rep. 815.

86. **QUIETING TITLE—Mining Claim—Pleading.**—In a suit to quiet the title to certain mining lands, an allegation in the answer that the lands do not contain known minerals in lode deposits, of sufficient value to pay for working them, is a statement of fact, not a conclusion of law.—*O'KEEFE V. CANNON*, U. S. C. C. (Mont.), 52 Fed. Rep. 898.

87. **RAILROAD COMPANIES—Accident at Crossing.**—A traveler on a public road must exercise at least ordinary care and caution. No recovery can be had by the plaintiff where his negligence in any degree contributed to the injury received by colliding with a railroad train at a public crossing, unless the defendant, being aware of the plaintiff's danger, and having the opportunity to avert it, fails to use ordinary caution to do so.—*BUTCHER V. WEST VIRGINIA & P. R. CO.*, W. Va., 16 S. E. Rep. 457.

88. **RAILROAD COMPANIES—Blackboards at Stations.**—Act March 9, 1889, § 1, providing that every "corporation, company, or person" operating a railroad within the State shall place in each passenger depot of such "company," located at any station in this State at which there is a telegraph office, a blackboard, on which such "company or person" shall post before the schedule time for the arrival of each passenger train stopping at such station, the fact whether such train is on schedule time or not.—*STATE V. INDIANA & I. S. R. CO.*, Ind., 32 N. E. Rep. 817.

89. **RAILROAD COMPANIES—Injuries to Stock.**—The fact that animals are trespassers upon the track of a railroad company does not excuse the servants of such company, who operate a train, from ringing the bell and blowing the whistle, and from other acts of diligence to prevent injury to such animals.—*GALVESTON, H. & S. A. RY. CO. V. BALKAM*, Tex., 20 S. W. Rep. 860.

90. **RAILROAD COMPANIES—Negligence.**—The mere fact of a collision does not establish a presumption of negligence on the part of a railway company in favor of its employees, such a presumption existing only in favor of passengers.—*SMITH V. MO. PAC. RY. CO.*, Mo., 20 S. W. Rep. 896.

91. **RAILROAD COMPANIES—Negligence.**—Whether a traveler, who stops and looks before attempting to cross, does so at a place where he can best see an approaching train, is for the jury.—*MCGILL V. PITTSBURGH & W. RY. CO.*, Penn., 25 Atl. Rep. 540.

92. **RAILROAD COMPANIES—Receivers.**—In an action by judgment creditors against a railroad company for

the appointment of a receiver, the complaint alleged that executions had been levied on defendant's rolling stock, preventing its operation; that it and its predecessor were both insolvent; that there were large quantities of stock along the road under contract for immediate shipment, [and immense quantities of grain to be threshed within the next 10 days, which would be shipped over defendant's road if it was in operation; that, if trains were not running on the road at once, great damage would accrue both to citizens and to defendant: Held, that the facts alleged did not justify the appointment of a receiver without notice to defendant.—*CHICAGO & S. E. RY. CO. V. CASON*, Ind., 32 N. E. Rep. 827.

93. **RAILROAD COMPANIES—Repair Streets.**—License from a city council to a railroad company to build its road across, along, or upon a public street gives it no power to destroy the street, and the company is bound to restore the street to its former state, or to such state as not unnecessarily to have impaired its usefulness for the public, and also to build proper crossings over the railroad, and keep them in good repair. If it fail to do so, the company may be compelled to do so by *mandamus*; and, as the company is guilty of maintaining a nuisance, equity may entertain a bill to abate such nuisance, and may compel the company to perform its duty.—*CITY OF MOUNDSVILLE V. OHIO R. R. CO.*, W. Va., 16 S. E. Rep. 514.

94. **RAILROAD COMPANIES—Street Railway—Injuries to Passenger.**—A street railroad company which has contracted with a city, as a consideration for its franchise, to keep a portion of its streets in good order and repair, is responsible in direct action by any person who suffers special damage resulting from its unlawful failure to do so.—*ORER V. CRESCENT CITY R. CO.*, La., 11 South. Rep. 818.

95. **REAL ESTATE AGENT—Brokers—Commission.**—A real estate broker who is employed to sell or dispose of the property of his principal is entitled to recover his commission whenever he has procured a customer who is willing and able to purchase the property at the price and upon the terms named by his principal.—*SIEMSEN V. HOMAN*, Neb., 58 N. W. Rep. 1012.

96. **REMOVAL OF CAUSES—Time of Application.**—Under Act. Cong. Aug. 13, 1888, § 3, which provides that a defendant may remove a cause at the time or before he is required by the State law or rule of court to plead or answer, a petition for removal filed after the statutory period for answering has expired comes too late, even though filed within the time allowed for answering by order of court, where such order is based on a stipulation entered into after expiration of the statutory period.—*ROCK ISLAND NAT. BANK V. J. S. KEATOR LUMBER CO.*, U. S. C. C. (Ill.), 52 Fed. Rep. 897.

97. **SALE—Conditional.**—Where the seller of a soda-water apparatus on installments reserves the title thereto until paid for, while any part of the price remains unpaid he has a sufficient interest therein to entitle him to possession, as against the purchaser's landlord in a distress for rent.—*TUFTS V. STONE*, Miss., 11 South. Rep. 792.

98. **SALE—Delivery.**—Where a vendor undertakes to deliver goods to the vendee by carrier at a certain point, but fails, and there is no evidence of a "delivery at that point," or "that the goods were there awaiting removal," it is error to submit such inquiries to the jury in an action for the price, but they should be told merely that under the circumstances there could be no recovery against the vendee.—*BRADDOCK GLASS CO. V. IRWIN*, Penn., 25 Atl. Rep. 490.

99. **SALE—Fraudulent Representations.**—In an action by the vendor of goods obtained on false pretenses, it is proper to ask for judgment in the alternative, either for a return of the goods or for the price.—*WOLF V. LACHMAN*, Tex., 20 S. W. Rep. 867.

100. **SALE—Rescission—Fraud.**—Where an insolvent purchaser of goods makes representations as to his financial condition which he knows do not represent the

true condition of his affairs, by reason of which a seller is induced to part with his goods on credit on the faith of such statements, the transaction is fraudulent, and the seller may, upon discovering the fraud, rescind the sale, and reclaim the goods.—*WORK V. JACOBS*, Neb., 53 N. W. Rep. 993.

101. **SALE—Warranty.**—Where defendants purchased of plaintiff's agent under a written contract of warranty, which warranty defendants knew was the only one the agent was authorized to make, a verbal contract of warranty by the agent, different in its terms from the written one, will not bind plaintiffs.—*C. AULTMAN & Co. V. YORK*, Tex., 20 S. W. Rep. 851.

102. **SPECIFIC PERFORMANCE—Pleadings.**—In an action for specific performance the petition must allege the legal obligations created by the contract sought to be enforced, and it is not sufficient where it simply states that a contract was made as shown by an exhibit.—*GUADALUPE COUNTY V. JOHNSTON*, Tex., 20 S. W. Rep. 833.

103. **TAXATION—Attorney's License Fee.**—Each member of a firm of practicing lawyers must pay the license taxes and fee prescribed for lawyers practicing their profession, by the act of June 10, 1891.—*BLANCHARD V. STATE*, Fla., 11 South. Rep. 785.

104. **TAXATION—License.**—The trade of barber is a "mechanical pursuit," exempted from license taxation by article 206 of the constitution.—*STATE V. DIELEN-SCHNEIDER*, La., 11 South. Rep. 823.

105. **TAXATION—Refusal to Accept Tender.**—Under the statute regulating the payment of poll taxes since June 12, 1892, a tax collector has no right to refuse to receive such taxes when tendered by a party on behalf of others from whom they are due, although the person making the tender is not authorized by the other persons to pay the same; and the refusal of a tax collector to receive poll taxes so tendered is within the grounds for which a governor may, under section 15, art. 4, of the constitution, suspend an officer.—*STATE V. JOHNSON*, Fla., 11 South. Rep. 855.

106. **TAXATION—Validity of Assessment.**—A tax assessment is not invalid because the landowner is described as "unknown," though the county record of deeds furnishes the name of the original patentee.—*STATE V. HURT*, Mo., 20 S. W. Rep. 879.

107. **TELEGRAPH COMPANIES—Failure to Deliver Message.**—Where defendant telegraph company fails to deliver within reasonable time a telegram announcing the death of plaintiff's father-in-law, whereby he is damaged by being obliged to have the remains disinterred, and his wife is prevented from attending the funeral, defendant is liable.—*WESTERN UNION TEL. CO. V. CARTER*, Tex., 20 S. W. Rep. 834.

108. **TELEGRAPH COMPANIES—Who may Sue.**—An allegation in a petition that a message was delivered to a certain telegraph company, and transmitted by it to a connecting company, which received the message, and delivered it, shows an implied contract between the sender of the message and the connecting company.—*MARTIN V. WESTERN UNION TEL. CO.*, Tex., 20 S. W. Rep. 860.

109. **TOWNS—School Taxes.**—The proper remedy for a school town to recover taxes apportioned to it, but paid by the county treasurer to the trustee of a school township, and converted by such township, is by action against the township, and not by *mandamus* against either the county treasurer or trustee.—*JEFFERSON SCHOOL TP. OF GREENE COUNTY V. SCHOOL TOWN OF WORTHINGTON*, Ind., 32 N. E. Rep. 867.

110. **TRESPASS TO TRY TITLE—Boundaries.**—Where in trespass to try title the question of boundary is involved, and a general verdict for plaintiff leaves the question of its correct location undetermined, the case will be remanded so that the judgment may definitely fix such line.—*REED V. CAVITT*, Tex., 20 S. W. Rep. 837.

111. **TRESPASS TO TRY TITLE—Rent.**—Where defendant, in fencing its tract of land, inclosed a smaller tract, belonging to plaintiff, and used the entire enclosure

for grazing as its own, defendant is liable for rent in trespass to try title, though it never disputed plaintiff's title or right of possession.—*ST. LOUIS CATTLE CO. V. VAUGHT*, Tex., 20 S. W. Rep. 835.

112. **TRIAL—Witnesses.**—On the trial of an action for damages for forcibly entering plaintiff's house and carrying away a certain check, plaintiff is not required to call as witnesses all the persons subpoenaed by her, and who were eye-witnesses of the transaction complained of, especially when such witnesses were in court, and part of them, at least, were called as witnesses for defendants.—*BONNELLI V. BOWEN*, Miss., 11 South. Rep. 791.

113. **TRUST—Set-off.**—A, having a pecuniary demand against B, procured him to make a conveyance of land to C to secure it, C giving back to B a defeasance. A afterwards became largely indebted to C, and C procured from B a conveyance of his equity of redemption: Held, that neither A nor his assignee could enforce the trust against C without allowing him for the indebtedness which A owed him.—*LODER V. ALLEN*, N. J., 25 Atl. Rep. 541.

114. **TRUSTEES AND RECEIVERS—Interest.**—It is the practice in this State to treat trustees, special commissioners, and others empowered or directed to sell, as special receivers of the proceeds of sale. In such cases, except under special circumstances, such trustees and commissioners to sell are not chargeable with interest on the proceeds of sale.—*DARBY V. GILLIGAN*, W. Va., 16 S. E. Rep. 507.

115. **VENDOR AND PURCHASER—Sale of Land.**—When there is a contract for the sale by the acre of a tract of land represented to contain a specified number of acres, and there is ascertained to be a deficiency in quantity, a court of equity will, even after a conveyance has been executed, abate from the unpaid purchase money the value of the deficiency at the stipulated price.—*BARTLETT V. BARTLETT*, W. Va., 16 S. E. Rep. 450.

116. **VENDOR AND VENDEE—Priorities.**—Where the interest of the vendor in an executory contract of sale of real estate is not subject to liens contracted by the vendee in constructing a building on the premises, a mortgage for purchase money, subsequently taken back at the same time the premises are conveyed to the vendee, is entitled to precedence over the liens.—*MOODY V. TSCHABOLD*, Minn., 53 N. W. Rep. 1023.

117. **VENDOR AND VENDEE—Sale of Wife's Land.**—In an action by a wife for the price of her land, sold to defendant by her husband, it is no defense that plaintiff's ownership was not disclosed when the sale was made.—*REED V. KLAUS*, Penn., 25 Atl. Rep. 491.

118. **WILLS—Construction.**—A will provided that "to my son W, I give in special trust for my daughter L, certain land; that he will permit her to occupy and enjoy the same for her separate use, not to be under the control or subject to the debts of her husband, but to enjoy all rents, issues, and profits during her natural life, and at her death to descend to the issue of her body; but, if she should die leaving no issue, then said estate to revert back to, and be a part of, my residuary estate." Held, that L's child had no interest in the trust estate during her life, and L's husband could not inherit from such child, who died before L.—*WALLACE V. DENIG*, Penn., 25 Atl. Rep. 534.

119. **WILLS—Estate.**—A will, after authorizing payment of testator's debts, contained this provision: "I give and bequeath to my loving wife, Rhoda, all my property, real and personal, for support during her natural lifetime; any remainder at her decease to be disposed of by her, as she may think just and right, among my children." Held, that the widow took a fee with all its incidents, including the power to sell and to devise.—*BOYLE V. BOYLE*, Penn., 25 Atl. Rep. 494.

120. **WILL—Mental Capacity.**—Where a testator has the legal capacity to make a will, he has the legal right to make an unequal, unjust, or unreasonable will.—*MARTIN V. TRAYER*, W. Va., 16 S. E. Rep. 489.

121. **WILL—Testamentary Capacity.**—In a suit to con-

test a will on the ground of mental incapacity it is error for the court to give an instruction defining a "sound and disposing mind" as one "capable of recalling all the testator's property, and its amount, condition, and situation; of estimating and dividing it out; of comprehending the scope and bearings of the provisions of the will; of recalling all the persons who come reasonably within the range of his bounty, and all he had previously done for any and each of them—" as such instruction overstates the capacity required to make a will.—*COUCH v. GENTRY*, Mo., 20 S. W. Rep. 890.

122. WITNESS—Privileged Communications.—Where a physician, who was called as a witness by defendant, had obtained his knowledge of the case by prescribing for plaintiff, he was incompetent to testify, under Code Civil Proc. § 1881, which provides that a physician cannot, without the consent of his patient, testify as to any information acquired in attending the patient, which was necessary to enable him to prescribe for her.—*FREEL v. MARKET ST. CABLE RT. CO.*, Cal., 31 Pac. Rep. 730.

ABSTRACTS OF DECISIONS OF MISSOURI COURTS OF APPEAL.

KANSAS CITY COURT OF APPEALS.

EVIDENCE—Conversion.—Evidence tending to show that the second mortgagee of a chattel took possession of the chattel, refused to deliver it up, on demand, to the first mortgagee, and sold it subject to the first mortgage, is sufficient to make out a case of conversion.—*BANKING HOUSE OF EDWARDS & McCULLOUGH v. BROOKS*.

GUARANTY—Notice of Acceptance.—In an action on a contract of guaranty: Held, that notice should have been given to the defendants that they were accepted as guarantors, for, unless accepted, no liability attached. If the defendants have knowledge that they are accepted, it is sufficient to bind them, through whatever channel such information came. It is not necessary to inquire how the knowledge was acquired.—*JOHN v. TOLMAN CO. v. MEANS*.

MASTER AND SERVANT—Injury to Servant.—It is not incumbent upon an employee to search for latent defects, but if a coal miner knew of the existence of seams in the roof of the mine in which he was employed, and of the consequent danger, or if the danger was so patent that an ordinarily observant person would have discovered it, such opportunity to know will be held as knowledge, whether, in fact, he knew it or not, and, in either case, his employer will not be liable for injury resulting therefrom. Though the employer knew the dangerous condition of the mine, if the employee had the same knowledge, and still took the risk, he cannot recover.—*WATSON v. KANSAS & TEXAS COAL CO.*

PARENT AND CHILD—Compensation for Services.—Services rendered by a daughter to her parent must have been performed under a contract, express or implied, that the one was to pay, and the other to receive pay, for such services, or no recovery can be had therefor. The law presumes such services to be gratuitous, and the burden rests upon the claimant to prove that they were not so intended when rendered.—*LOUDER v. HART, ADMR.*

PLEADING—Evidence.—To a suit on a promissory note defendant's answer pleaded a set-off. The reply was a general denial. At the trial plaintiffs introduced evidence tending to show that another person was interested in defendant's claim: Held, this was a defect of parties, which, if it had appeared on face of the answer would have been the subject of demurrer. Not so appearing, it should have been set up in the reply. It is not enough that evidence may appear tending to establish facts which, if pleaded, would defeat a recovery.—*WINTON & DEMING STATE BANK v. HARRIS*.

PLEADING—Justice's Court.—In order to render a

complaint under Sec. 2611, R. S. 1889 good, it must allege (1), that there was a certain crossing over defendant's railway at a certain point in a certain township; (2) that adjacent to such crossing the defendant had failed to erect and maintain a proper cattle guard, sufficient to prevent horses, cattle, mules and other animals from getting upon defendant's track; (3) that by reason of such insufficient cattle guard plaintiff's animal passed from said crossing upon defendant's track and was there struck and killed. A complaint defective in these essentials is insufficient.—*JONES v. THE CHICAGO BURLINGTON & KANSAS RT. CO.*

PRINCIPAL AND AGENT—Agent's Liability.—In an action for money had and received, held that plaintiff could recover of defendant money he deposited with defendant, as the agent of "D", for "D", on a contract of sale of land, "D" having repudiated the agency of defendant, and refused to perform the contract, defendant still holding the money.—*WINNINGHAM v. FANCHER*.

PRINCIPAL AND AGENT—Estoppel.—In an action to enforce a mechanic's lien, held the declarations of plaintiff's book-keeper, made to the owner, in regard to contractor's responsibility cannot estop the plaintiff, the book-keeper possessing no authority to make them. The admissions of an agent can bind his principal in only two cases; (1) when the scope of the agency is such that the agent is an agent for the purpose of making the particular admission; and (2) where the admission is in the form of a declaration made by an agent while acting within the scope of his agency, and about the business of his principal concerning such business.—*MIDLAND LUMBER CO. v. KREEGER*.

PRINCIPAL AND SURETY.—Where the surety claims to have been discharged by reason of an agreement between the creditor and principal debtor, extending the time of payment, it must appear that the agreement was upon a valuable consideration, and the extension for a definite period of time. A surety cannot compel the creditor to exhaust liens and collaterals before enforcing his debt against the personal liability of the surety. When the surety has paid the debt, he is subrogated to the security of the creditor.—*THE AULTMAN & TAYLOR CO. v. SMITH*.

RAILWAYS—Evidence of Right of Passage.—Plaintiff purchased a ticket over defendant's road, with stop-over privileges. When requested, he presented his ticket to a conductor, who had known him for some time, and knew him to be the man whose name was on the ticket as the purchaser thereof, and, at the same time notified the conductor that he intended to stop over at a way station. The conductor detached and retained that part of the ticket evidencing plaintiff's right to thereafter continue his journey. Plaintiff, having stopped over, as his ticket allowed, and according to his notice to the conductor, resumed his journey, the following day, and within the time allowed by his ticket, upon a train in charge of same conductor, but was forcibly ejected because he had no ticket and refused to pay fare: Held, these facts establish a cause of action for damages, and a demurrer to the evidence should not have been sustained.—*CHERRY v. K. C. FT. S. & M. RT. CO.*

REMEDIES—Election.—If default be made in the payment for goods sold for cash on delivery, the seller has a right to either ratify or rescind the sale. An election to affirm or disaffirm, if done with knowledge of the facts, determines the legal rights of the parties, once for all. The institution of suit by attachment for the purchase money, with knowledge of the material facts, ratifies the sale, and precludes a subsequent action of replevin, based upon a rescission of the sale. This opinion, being in conflict with *Anchor Milling Co. v. Walsh*, 29 Mo. App. 107, and *Lapp v. Ryan*, 23 Mo. App. 436, this cause is transferred to the supreme court.—*JOHNSON BRINKMAN COMSN. CO. v. MO. PAC. RT. CO.*

CENTRAL LAW JOURNAL.

IF YOU NEED THE U. S. REPORTS

DO NOT BUY BEFORE WRITING FOR OUR

Art Pamphlet about Myer's Federal Decisions.

ALL FEDERAL CASES IN THE BEST ARRANGEMENT FOR PRACTICAL USE

SAVES YOU LOTS OF MONEY.

Four	{	MYER ON VESTED RIGHTS. 1891,	.	.	.	\$6.00
Good		WEBB ON RECORD OF TITLE. Late Edition	.	.	.	6.00
Books.		MURFREE ON SHERIFFS.	.	.	.	6.00
		MILLS ON EMINENT DOMAIN,	.	.	.	5.00

GILBERT BOOK COMPANY, ST. LOUIS

LEGAL DIRECTORY.

ALABAMA.	
MOBILE.....	CLARK & CLARK
COLORADO	
DENVER.....	NORRIS & HOWARD
DISTRICT OF COLUMBIA.	
WASHINGTON (P. O. Box 38).....	DUDLEY & MICHENER
FLORIDA.	
JACKSONVILLE (52½ West Bay St.).....	CROMWELL GIBBONS
ILLINOIS.	
CHICAGO (100 Washington St.).....	CHARLES T. MASON
CHICAGO (Court and Bank bldg.).....	L. G. MUNFORD
PEORIA (Law & Col.).....	CRATTY BROS., FULLER & GALLUP
SPRINGFIELD (Law & Col.).....	SANDERS & BOWERS
INDIANA.	
RICHMOND	HENRY C. STARR
INDIAN TERRITORY.	
MUSKOGEE.....	SHEPARD & SHEPARD
KANSAS.	
TOPEKA.....	HENRY L. CALL
LOUISIANA.	
NEW ORLEANS (5 Carondelet st.).....	GUSTAVE A. BREAUX
MASSACHUSETTS.	
BOSTON (88 School st.).....	J. W. PICKERING
BOSTON (88 Cornhill st.).....	LYNDE, HARDING & LYNDE
MISSOURI.	
KANSAS CITY (401 Mass. Bldg.).....	W. F. HENRY
NEW MEXICO.	
ALBUQUERQUE.....	R. W. D. BRYAN
SANTA FE.....	CATRON, THORNTON & CLANCY
OHIO.	
CLEVELAND (286 Sup'r) EVERETT, DELLENBAUGH & WEED	
SOUTH CAROLINA.	
CHARLESTON (Att'ys & Counsellors).....	SMYTHE & LEE
CHARLESTON (47 Broad st.).....	MORDECAI & GADSDEN
TEXAS.	
AUSTIN (1 & 2 Litten bldg.).....	Z. T. FULMORE
UTAH TERRITORY.	
SALT LAKE CITY.....	SHEPARD, CHERRY & SHEPARD

ALBANY LAW SCHOOL.

Established 1851.

Course one year. Winter term, January 4th, 1893.

Address DEAN OR SECRETARY,

ALBANY, N. Y.

Graduates please forward addresses for catalogue in preparation.

YALE LAW SCHOOL.

NEW HAVEN, CONN.

Twenty-five instructors; degrees of LL.B., B.C.L., M.L., and D.C.L. conferred. Regular course, two years. Post graduate courses, one and two years. For information, address

Prof. FRANCIS WAYLAND, Dean.

ST. LOUIS LAW SCHOOL.

Law Department of Washington University,
ST. LOUIS, MO.

Annual Session, October to June. Course completed in two or three years at option of student. Admits to the Bar. For Catalogues, etc., address the Dean,

WILLIAM G. HAMMOND,

1417 Lucas Place

UNIVERSITY OF MICHIGAN.

Law Department.

The next session opens October 1st. For catalogue, giving full information, address,

J. C. KNOWLTON,

Ann Arbor, Mich.

GET YOUR LAW JOURNALS BOUND.

Subscribers to the CENTRAL LAW JOURNAL, by sending their volumes to us can have them bound:

Half Sheep, cloth sides, leather back and corners,	
half year in a volume, per volume	\$1 00
Full Law Sheep, half year in a volume, per vol....	1 25
Half Sheep, cloth sides, leather back and corners,	
a whole year in a volume, per volume.....	1 50
Full Law Sheep, a whole year in a volume, per vol	2 00

Subscriber to pay transportation both ways.
The expense of sending unbound numbers by mail is **FOUR CENTS PER POUND** or about **FIFTEEN CENTS** for a volume, consisting of a half year, and for returning same when bound, **thirty cents**, or double these figures for a volume consisting of a whole year.

Central Law Journal Company,
ST. LOUIS, MO.

NOW READY.

Both Elementary and Practical.—Perfected.—Latest Authorities.

BISHOP'S NEW CRIMINAL LAW,

Public School Library
Chestnut st

Joel Prentiss Bishop, LL.D.,

Author of "Commentaries on the Law of Contracts," "Non-Contract Law," "Marriage, Divorce and Separation," "Criminal Procedure," etc., etc.

This is not an ordinary new edition of Bishop's Criminal Law, as the author has in the main rewritten the work, and in various ways enlarged and improved it, without radically changing the arrangement, so that as now offered, it has the following features:

VOLUME I.

is complete in itself, constructed and indexed to be sold separately to purchasers who do not wish also the second volume. It explains the entire elementary principles of the law of crime, and to a considerable degree compares them with those of civil wrongs. As used apart from the second volume, it is intended both for law students, and for lawyers who limit their practice to civil causes; its teachings being such as are necessary to be understood by the entire legal profession, whether practicing in the criminal department or not; besides which it serves as the introductory and elementary part of the full exposition comprised in the two volumes combined.

VOLUME II.

consists, as said in the Preface, "of the minuter expositions of forty-nine specific crimes, whereof a general view, with the leading principles governing them, appears in the first volume."

THE TWO VOLUMES TOGETHER

cover the entire field of the substantive law of crime, stated in the order of its principles and underlying reasons, and illustrated by many specific instances as were deemed necessary to completeness and distinctness. The whole is sustained by multitudinous references to American and English cases, embracing nearly the entire mass given in the books of reports.

BISHOP'S NEW CRIMINAL LAW is in two large and handsome octavo volumes, of more than 1800 pages, beautifully printed and bound in the best law book style.

Price \$12.00 net; delivered to any address for \$12.60.

T. H. FLOOD & CO., Publishers,

149 MONROE STREET, CHICAGO, ILL.